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**THE LEGAL ASPECTS OF LOCAL FINANCIAL SUPPORT FOR PUBLIC
SCHOOLS IN NORTH CAROLINA**

The University of North Carolina at Greensboro

Ed.D. 1984

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THE LEGAL ASPECTS OF LOCAL FINANCIAL SUPPORT
FOR PUBLIC SCHOOLS IN NORTH CAROLINA

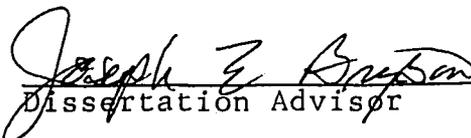
by

Danny William DeHart

A Dissertation submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
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of the Requirements for the Degree
Doctor of Education

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Approved by


Dissertation Advisor

APPROVAL PAGE

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Since 1933 North Carolina has used the foundation approach to funding its public schools, with most of the costs being covered by the State. Under North Carolina law, local support is required only for school facilities and maintenance, although the state encourages counties to supplement the foundation program with local funds. Recent figures indicate, however, that nearly one fourth of the total number of current expense dollars consumed in North Carolina come from local funds. While state allocations to local school systems, based on numerous formulas, vary from county to county, differentials in these allocations remain relatively unimportant. However, local expenditures have become dangerously widespread, considering that North Carolina's Constitution calls for a general and uniform system of free public schools.

Analysis of the data found in this study discloses wide variations in the number of local current expense dollars used to support the state foundation program. From a combined city/county high of \$837.48 per pupil in Orange County, to a low of \$230.13 in Bertie County, a differential of \$607.36 in per pupil expenditures can be found. Further investigation and comparison presents evidence that county wealth, based on local tax resources, is significantly correlated to the number of local dollars spent on public education. While other variables such as per capita income

and the county tax base should not be overlooked in studying North Carolina's widespread local funding differentials, the important point must not be forgotten: that nearly 25 cents of every dollar spent on public education in North Carolina comes from local funds.

The significance of these funding differentials becomes more meaningful as they are translated into their true terms-- educational disparities. While the questions of inequality and inequity have been avoided in North Carolina's courts, school funding decisions by the State Supreme Court have played an important role in developing the State's system of public schools. School finance issues such as taxation, school bonds, and budget disputes have been litigated in North Carolina's courts for more than 100 years. With the recent rise in local funding, it is not unthinkable to expect the educational disparity issue to come before North Carolina's judicial system.

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To Mildred L. Scott, I am specially grateful for transposing often illegible manuscript into perfect typewritten copy. Moreover, I greatly appreciate the constant support and encouragement she provided me.

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To my son Derrick, I can only hope that he will in some way benefit from my experiences, and that somehow he will be compensated for the many lost hours of companionship with his father. May he seek and reach a zenith of his own someday.

Finally, I express my sincere appreciation to Teresa for her patient understanding and continuing support. As we have shared the discomfort of placing my doctoral studies first, may we also share the benefits of delayed gratification. The task would have been even more difficult without her.

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CHAPTER I
INTRODUCTION

Federal, state, and local dollars make up the amount spent on public school education in every state across America, often referred to as the total per pupil expenditure. Many educators and laymen as well believe a direct link exists between this expenditure and quality of education.

North Carolina has basically a state-supported system of public education, which incorporates a flat grant system of finance based primarily on the number of students enrolled in a local school unit. This system, however, does not cover the total per pupil expenditures costs and must be supplemented by local dollars. One problem fundamental to this method of finance is that, when local dollars are used to support the instructional program, educational differences arise between rich and poor counties. Thus, the potential impact of local funding practices on public education is of paramount concern. For as the amount of local support varies, so will educational disparities for thousands of children attending public schools in North Carolina be created.

The issues surrounding public school finance and local financial support are controversial and seemingly unsettled. Similarly, the question of what constitutes inequality in

educational opportunity elicits multiple answers, most of which are relative only to a given view. Thus, subjectivity lingers aimlessly awaiting objective study to synthesize opinions into facts.

The overall purpose of this study is to provide educational decision-makers with appropriate information regarding the legal principles of local financial support for public education in North Carolina. By doing so, it is believed that a somewhat concomitant purpose will also be satisfied -- the exposition of unequivocal fiscal disparity suffered by poor counties, in the funding of education, as they helplessly compete with the affluence of wealthier ones.

STATEMENT OF THE PROBLEM

This study examines the legal aspects of local financial support for public schools in North Carolina from two points of reference. The first point concerns various costs of the public school program which local boards of education are required by law to cover. Chiefly, these costs include such items as capital outlay and maintenance expenditures for which the state provides no equalization scheme to compensate the poorer school districts.

The second point of reference examines that which is actually being practiced, but not required, by local boards of education in regard to local current expense dollars used to support the basic instructional program provided by the

state. Additional support by counties of greater wealth invariably leads to a greater quantity of educational programs, instructional supplies and equipment, and higher teacher pay supplements.

Since it is believed that poorer counties are less likely to fund education at the same level as do wealthy counties, and that educational disparities are likely to result from such practices, a need exists to review the legality of local funding practices for education in North Carolina.

QUESTIONS TO BE ANSWERED

One of the stated purposes of this study is to provide educational decision-makers with a legal framework of local funding practices and procedures used in North Carolina. Since it is believed that such practices lead to fiscal inequality for the purposes of education, a list of key questions which research needs to answer are listed below.

1. Does the current method of North Carolina school finance lead to inequality in education?
2. Does a significant relationship exist between county wealth and local expenditures for education?
3. What are the major educational issues regarding local financial support for public education in North Carolina?
4. Which of these issues are likely to be included in court cases related to local funding of education?

5. Which of the legal principles established by landmark cases regarding the financing of public education are applicable to the funding practices found in North Carolina?

6. Based on the results of recent court decisions, what specific issues related to local financial support are currently being litigated?

7. Should North Carolina increase the basic level of support or should North Carolina equalize the local units' ability to supplement the basic level of state support?

SCOPE OF THE STUDY

The history of the legal aspects of public school finance is of primary importance to those who refer to the past as a means of plotting the future. The financial burden of funding public education must reflect equity and fairness for all. The legal ramifications involved in public school finance, specifically from the local level found in North Carolina, will be described in this study. The extent to which both required and allowed funding practices have been and are being challenged and litigated, the reasons for the litigation, the results of related court cases, and the possible effects these court decisions will have on the future of school finance, will be the central thrusts of this research.

In addition to the legal principles found in this study, a statistical comparison has been prepared in order to show how present funding practices, at the local level

in North Carolina, adversely discriminate against counties of lesser wealth. The information found in the statistical comparison pertains to fiscal school year 1981-82, and is typically indicative of county support for public education.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

This study will be the product of two basic research methods: historical and descriptive statistical analysis. The historical portion of the study will be founded upon available primary and secondary references used to express the legal principles governing local financial support for public education in North Carolina. Primary references will include applicable federal and state court records contained in national and state reporter systems, records from lower court decisions, and the General Statutes of North Carolina. Secondary sources will include such publications as books, periodicals, and newspaper articles relating to the history of school finance in America, and specifically North Carolina. Thus, the historical research will emphasize the legal and social aspects of local school finance practices, including the local budget process.

The statistical portion of this research will examine the degree to which local funds are being used to supplement the state-supported instructional program. This study will use a dollar rank comparison, in order to determine whether a significant relationship exists between county wealth and local educational expenditures. By applying

a per pupil resource rank and a per pupil expenditure rank (current expense) for each of North Carolina's 100 counties to a statistical formula known as the Spearman rho (rank) correlation coefficient, a relationship or correlation can be established. This correlation may be positive, negative, or show no significant relationship.

DELIMITATIONS OF THE STUDY

While this study will do justice in promulgating the legal and statistical facts regarding local financial support for education, other issues are present and prevailing. The externalities encountered by local boards of education are many, as they rely on county commissioners to fund the local school budget. Since this somewhat divides the responsibility of budget making and funding between the two boards, philosophical and social disagreement at some point is almost inevitable. Thus, it is the duty of the legal system to render judgment over such budget disputes, thereby making legal what may not be moral. Should educational disparities result from such legal judgments, then from the halls of legislation must come a new system of finance designed to equalize educational funding opportunity.

This study neither identifies nor recommends how a local board should spend additional dollars in removing educational inequalities, given the opportunity to do so. Conversely, this research wishes to establish need for an equalization plan that would provide poorer counties the

opportunity to fund local per pupil expenditures at the same rate as do wealthy counties. While no effort has been made to select or suggest any new or different methods of public school finance, the study of current funding practices should provide some clue as to how well our present system of finance treats equality in education.

DEFINITION OF TERMS

For the purposes of this study, the following selected terms are defined below:

Local Educational System (LES). A geopolitical subdivision of the State public school system which is governed by a local board of education. It may be a city school administrative unit, a county school administrative unit, or a city/county school administrative unit.

Average Daily Membership (ADM). The total days in membership of all students for the number of days school was in sessions during the academic year.¹

Local Revenue Resources. The total amount of tax monies received from county-wide property tax, license tax, excise stamp tax on conveyances, local government sales tax, intangible property tax, and beer and wine excise tax.

Local Per Pupil Resources. The total local revenue resources divided by the total county average daily membership.

Local Per Pupil Expenditure. The amount in dollars

¹Statistical Profile: North Carolina Public Schools, Raleigh: North Carolina State Board of Education, 1982.

spent for current operating expense purposes by the local educational system for each pupil.

Budget. "A plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year."²

Budget resolution. "A resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year."³

Budget year. "The fiscal year for which a budget is proposed and a budget resolution is adopted."⁴

Fiscal year. The annual period for the compilation of fiscal operations, which begins on July 1 and ends on June 30.⁵

School year. The annual period of time that coincides with the fiscal year.

SIGNIFICANCE OF THE STUDY

Historically, the relationship between per pupil expenditure and quality of education has been a topic of concern in the field of education, although the relationship has received serious attention only since the Serrano v.

²
N. C. Gen. Stat. § 115C-423 (1975).

³
Ibid.

⁴
Ibid.

⁵
Ibid.

Priest decision by the California Supreme Court in 1971.⁶

In a six-to-one opinion, the judges of the California Supreme Court found the California system of financing public educational unconstitutional. The opinion written by Justice Sullivan has had lasting implications in the area of school finance policy.

We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded therefore, that such a system cannot withstand constitutional challenge and must fail before the equal protection clause.⁷

Since the Serrano decision, courts have continued to apply pressure on states to develop constitutionally permissible educational finance systems.⁸

"In order to meet the new standards of equity suggested by Serrano, state legislatures have been forced to consider major revisions in the finance of public education".⁹

⁶ Serrano v. Priest 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1241 (1971).

⁷ Ibid., at 604.

⁸ Allan Odden, "Public School Finance: Fine-Tuning the System," State Government, LI (Winter, 1978), 45.

⁹ John B. Russo, "Changes in Bargaining Structures: The Implications of the Serrano Decision," Education and Urban Society, XI (February, 1979), 209.

Similar to North Carolina, other state governments have assumed an increasing role in school funding. Twenty-five states enacted basic school finance reforms during the 1970's. The key feature of each new school aid reform program is a revised general aid equalization formula that distributes relatively more state aid to school districts poor in property wealth.¹⁰ Though state support has increased, it is interesting to note that as the local share of a school costs has declined over the last thirty years, schools have claimed a rising portion of property tax.¹¹ Thus, much attention has been given to setting property tax limits in many states. In New York, small city districts have experienced difficulty in trying to balance the rising expenditures for education with constitutionally limited revenues.¹² In some states the substitution of a state income tax for the local property tax has been used, but research indicates that the effect of such a substitution on the quality of education is likely to be

10

Odden, loc. cit.

11

Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education (Englewood Cliffs, New Jersey: Prentice-Hall, 1975), p. 351.

12

Dale Hickam, Robert Berne, and Leanna Stiefel, "Taxing Over Tax Limits: Evidence from the Past and Policy Lessons for the Future," Public Administration Review, XLI (July/August, 1981), 446.

quite small.¹³

While support of public education in some states is considered a local responsibility, North Carolina's Constitution has recognized public education as being a legitimate state function since 1776. The constitution thus stated, "that a school or schools shall be established by the Legislature for the convenient instruction of youth."¹⁴ Further legislative action was taken in 1839, when North Carolina initiated a direct state aid system, in order to foster financial support for public education. In 1868 the State Constitution required the General Assembly to provide a "general and uniform system of public schools," and required that every county provide a school term of at least four months.¹⁵ State school finance policies were shaped by the problem of inequality in the ability to finance education until 1931, when the state assumed basic responsibility for financing public schools, and by financing most of the operating expenses, thus achieving a high degree of equality among the school units.

In an attempt to ensure a minimum level of support in

13

John S. Akin and James H. Wyckoff, "Allocative Effects of Tax Substitution on Primary and Secondary Education," Southern Economic Journal, XLVIII (April, 1982), 1072.

14

North Carolina Const. art. XLI (1776).

15

North Carolina Const. art. IX, §§ 2-3 (1868).

each school district, between the years 1868 and 1931, the state provided aid by designating state tax revenues, in addition to requiring each local governmental unit to help balance the financial support needed.¹⁶ This approach was unsuccessful because of the fundamental problem of differences in local fiscal ability. Although the state continued to increase the amount of aid to all schools, disparities in expenditures continued to increase, even though several "equalization" plans were used.

Since 1931 the state has used formulas based on average daily membership to finance almost all of the operating expenses for the minimum school term. For a short period of time during the early 1930's all local school taxes were abolished and financial equity was reached among North Carolina's public schools. Equality was short-lived, however, as authority was given to re-enact local school taxes, and some counties once again supplemented the state program.¹⁷

Although the state now assumes the responsibility for the operation of a nine-month school term as a basic level of support, the question still remains: does this provide an equal educational opportunity for all children? Since the major portion of dollars spent for public school education at the local level in North Carolina is a direct result of

16

Charles D. Liner, "Financing the Public Schools," Popular Government XLVI (Fall, 1980), 6.

17

Ibid.

county taxation, it is assumed that counties having the greater wealth in this respect will fund their public school programs at a higher level than do poorer counties. Assuming that equal educational opportunities are somewhat dependent upon dollars spent for education, and that most of the per pupil expenditure disparities are the result of local financial support, it becomes important to look closely at local funding of public schools in North Carolina. Should the state increase the basic level of support or should the state equalize the local units' ability to supplement the basic level of state financial support?

The dilemma surrounding public school finance is one that is not likely to be solved in the immediate future. Equality in educational opportunities is the ideal, and conversely, tax relief at the local level seems to be a necessity. While North Carolina has been a national leader in centralizing and equalizing the responsibility for school finance, an increasing tendency to support school expenditures from local revenues may be leading to greater disparities among the State's 142 school units at a time when other states are moving to reduce inequalities in this area.¹⁸

DESIGN OF THE STUDY

The remainder of the study is divided into four major

¹⁸
Ibid.

parts. Chapter II contains a review of related literature. In addition to the historical literature dealing with public school finance at the national, state, and local levels, legal references have been made in order to express the importance of several precedents set by judicial systems in other states as well as in North Carolina.

The third chapter presents the legal aspect of local financial support for public education in North Carolina. This chapter includes a narrative discussion of the state constitution (North Carolina), the local budget process, general statutes applicable to local finance aspects of education, and voted tax supplements for education. In the latter portion of this chapter a statistical comparison of local per pupil resources and local per pupil expenditures has been constructed. This comparison was used to determine whether a significant relationship exists between county wealth and local per pupil expenditures (current expense) for education.

Chapter IV contains an analysis of selected school finance court cases. These cases deal primarily with budgetary disputes, purchase of property and service disputes, and voted tax supplement disputes.

The final chapter contains a review and summary of the information set forth in the preceding chapters. The questions asked in the beginning pages of Chapter I are

reviewed and answered in this chapter. Finally, some concluding thoughts relative to local financial support for public education are presented.

CHAPTER II

REVIEW OF SCHOOL FINANCE PRACTICES

OVERVIEW

The history of public school finance in the United States is of considerable interest. The issue of education, although long recognized as important, has been subjected to the vicissitudes of American life for more than three hundred years. Just as the rationale for the establishment of schools has changed over this period, so have the methods of school finance.

Education and the method of educational finance began as a private concern in early American communities, and gradually grew to encompass broader local interests. The idea of a national system of public education was never established as the federal constitution laid no claim to education. Schooling became a state responsibility. Thus, each state was left to develop its own system of public schools as well as methods of finance.

In the early days of this country most states returned the issue of education to the local communities and school districts, giving them the power to tax for the purposes of establishing and maintaining public schools. This practice continued until the latter part of the 1800's when many

state governments began to show a much keener interest in education. This change was due to the impact of the educational reform movement, and the industrial revolution that were sweeping across the nation.

Just as the role and purpose of education have encountered a number of permutations over the years, school finance has also undergone several changes. Actually one state learned very little from other states, as there was a lack of standardization, and frequently much diversity in school finance systems.¹ Gradually, the financing of education became a responsibility shared between state and local governments that included a modicum of federal support. Thus, education, which was once used primarily by local communities to promote religious beliefs and good citizenship, has become a guarantee founded in state constitutions across America.

Over the years the major source of revenue used to support public education has been the property tax, although some states have elected to use a consumer sales tax. Until recently, methods of finance have seldom been challenged and litigated. It is not that the American people have enjoyed paying such taxes, but rather they have viewed

1

Percy E. Burrup and Vern Brimley, Jr., Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1982), p. 130; see also Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education (Englewood Cliffs, New Jersey: Prentice-Hall, 1975), p. 335.

taxes for educational purposes as a necessary evil. While most states and local governments recognize that inequity is somewhat indigenous to many forms of taxation, equalization efforts have basically remained obscure.

As the shifting of wealth has become less and as the burden of the poor has become greater, the recognition of fiscal disparity has encouraged the indigent of more recent times to plead their cases before the courts. In 1971 the California State Supreme Court took the position that a child's education should not be based upon the wealth of his parents and neighbors.² Since that time, many state courts have taken a similar view and have struck down state school finance systems, declaring them unconstitutional. Thus, not only is education a legal right found in state constitutions across America, but the right to equal educational opportunities is currently being adjudicated by both state and federal courts. Meanwhile, the issue of school finance is at present unsettled.

²
Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1241 (1971).

A BRIEF HISTORY OF SCHOOL FINANCE IN AMERICA

Early School Finance

It is clear that early American schools had ineluctable ties with the church, as education of children was mostly religious in purpose. As a result of the Protestant Reformation in Europe, early settlers came to the new land to set up a civic form of government and to practice religious freedom. Although laws were passed by the early colonial governments that encouraged education, it must be kept in mind that these governments were servants of the established church in each colony. The Massachusetts laws of 1634 and 1638 established the principle of common taxation of all property for town and colony benefits, which included support for schools. These laws, together with two later Massachusetts laws of 1642 and 1647, provided for equalized and compulsory taxation of all town charges.³ Thus, the foundation of the American public system of education is represented in this early legislative action. It is also important to note that these early laws were not always popular, as the courts were used to enforce them.⁴

The legislation laid down in Massachusetts was used by most of the other New England colonies, with the exception

³ Ellwood P. Cubberley, Public Education in the United States (Cambridge, Massachusetts: The Riverside Press, 1962), pp. 14-18.

⁴ Ellwood P. Cubberley, Readings in the History of Education (Boston: Houghton Mifflin, 1920, 1920), p. 286.

of Rhode Island, as a basis for the establishment and maintenance of schools. While interests in education became more generalized, not much changed in terms of its rationale until the middle of the eighteenth century. By 1750 a change in religious thinking had become quite marked, as the monopoly of any sect in a colony was over.⁵ Secular interests began to replace religion as the chief topic of conversation and thought, and of literature found in a few colonial newspapers. The effects of such change were reflected in both support and character of education found in the schools at that time:

The evolution of the public or state school in New England from the original religious school; the formation generally of the American common school; the rise of the district system; the introduction of new types of textbooks; the decline of the Latin Grammar Schools; the rise of the English Grammar School and a little later of the essentially American Academy; the establishment of two new colleges (Pennsylvania, 1749; Kings, 1754), which from the first placed themselves in sympathy with the more practical studies; - all these were clear indications that the end of the colonial period marked the abandonment of the transplanting of English educational ideas and the schools and types of instruction.⁶

Thus, while 1750 marked the true beginning of an American type of school, the evolution of such schools, which would better facilitate the needs of the American people, was severely tempered by the War for Independence.

⁵ Ellwood P. Cubberley, Public Education in the United States (Cambridge, Massachusetts: The Riverside Press, 1962), pp. 58-61.

⁶ Ibid., pp. 75-76.

School Finance During the 1800's

The War for Independence all but destroyed education in America. The former colonial governments were left exhausted and impecunious following the war and gave little thought to education. Many schools closed, even in the New England states where the strongest belief in education had resided. The new governments in trying to solve their political and economic problems were not concerned with the subject of education. Indeed, several years would pass before education would regain some prominence.

Although the Northwest Ordinance of 1787 expressed that, "schools and the means of education shall forever be encouraged,"⁷ by providing new states with land sections for the maintenance of schools in every township, it was 1802 before the first state, Ohio, took advantage of the ordinance. The simple fact was that because of the agrarian lifestyle of the American people, education was not high on the nation's priority list. This feeling is somewhat explained by Cubberley in the following:

Regardless of the national land grants for education made to the new states, the provision of the different state constitutions, the beginnings made here and there in the few cities of the time, and the early state laws, we can hardly be said, as a people, to have developed an educational consciousness, outside of New England and New York, before about 1820, and in some States, especially in the

⁷ Burrup and Brimley, op. cit., pp. 131-132.

South, a state educational consciousness was not awakened until very much later.⁸

Thus, education, outside the New England area, and to some degree even there, was left largely to private individuals, churches, incorporated school societies, and state schools for the children of the indigent as might have been provided by private or state funds, or a combination of the two.⁹

Ironically, education was considered a private affair for both the rich and the poor, as the elite went to truly private schools and the poor were left with charity schools and the rate bill school.¹⁰ Other sources of school support included "tuition fees, taxes on banks, licenses on occupations and commodities, the use of lotteries, gifts and bequests, and the income from permanent public-school endowments, fines, forfeitures, and penalties."¹¹ However, the need for direct taxation set the stage, and the battle for free schools dominated the second quarter of the nineteenth century. By 1825 it was realized that general and direct taxation was the only safe method of state support for public schools but "now for the first time direct taxation for schools was likely to be felt by the taxpayer, and the fight for and against the

8

Cubberley, Public Education, p. 110.

9

Ibid., p. 111.

10

John E. Coons, William H. Clune III, and Stephen D. Sugarman, Private Wealth and Public Education (Cambridge Massachusetts: Harvard University Press, 1970), p. 47.

11

Edgar W. Knight, Education in the United States (Boston: Ginn and Company, 1929), p. 249.

imposition of such taxation was on in earnest."¹² Thus, "the real issue in the nineteenth-century common school movement was the finance question: in short, taxes."¹³ Cubberley summarized the progressive struggle for free public school support in the following way:

1. Permission granted to communities so desiring to organize a school taxing district, and to tax for school support the property of those consenting and residing therein.
2. Taxation of all property in the taxing district permitted.
3. State aid to such districts, at first from the income from permanent endowment funds, and later from the proceeds of a small state appropriation or a state or county tax.
4. Compulsory local taxation to supplement the state or county grant.¹⁴

School reform was indeed the keynote to the second quarter of the nineteenth century. The great school debate concerned:

Whether it was moral, right, democratic, and constitutional to make schools a function of government, thereby forcing nonconsenting, nonusing taxpayers to support them.¹⁵

In many ways Massachusetts, under the leadership of Horace Mann, led the nation in the ideals of universal education,

¹² Cubberley, Public Education, p. 180.

¹³ Coons, Clune, and Sugarman, op. cit., p. 46.

¹⁴ Cubberley, Public Education, p. 180.

¹⁵ Coons, Clune, and Sugarman, op. cit., p. 49.

although there were "significant variations from state to state and from region to region."¹⁶ As the ideal of democracy grew clearer, education took on a new political meaning -- one of a public function. Some public-spirited citizens believed that public education was a necessity in promoting an intelligent and happy citizenship.¹⁷ However, this view would not be shared by the majority until the struggle for free universal education had been consummated. The conflict was summarized by Cremin:

The fight for free schools was a bitter one, and for twenty-five years the outcome was uncertain. Local elections were fought, won, and lost on the school issue. The tide of educational reform flowed in one state, only to ebb in another. Legislation passed one year was sometimes repealed the next. State laws requiring public schools were ignored by the local communities that were supposed to build them. Time and again the partisans of popular education encountered the bitter disappointments that accompany any effort at fundamental social reform.¹⁸

Thus, the nineteenth-century common school movement involved the establishment of school upon a politico-economic basis rather than a religious one.¹⁹ The free school idea was slow developing, although most states had passed legislation

16

Lawrence A. Cremin, The Transformation of the School (New York: Vintage Books, 1964), p. 13.

17

Knight, op. cit., p. 253.

18

Cremin, op. cit., p. 13.

19

Paul Monroe, A Brief Course in the History of Education (New York: The Macmillan Company, 1914), p. 392.

supporting education at public expense by 1860.

The next step in public school development focused up- on the extension of public education to include high schools. Just as free schools had replaced the pauper and rate bill schools, the high school replaced the academy. Similar to the common school movement, the quest for public high schools was not without conflict. The Civil War had a pernicious effect on education in general and the development of high schools in particular, as many states were left in financial despair, especially in the South. It would take some states more than two decades to recover and to restore education as a primary public concern. While states were willing to enact legislation in favor of public education, financing was still mostly a local matter.

Taxation for the establishment of high schools became an issue of constitutional debate to be reckoned with by the courts. One of the most notable of such cases emerged from Kalamazoo, Michigan in 1872, when several citizens filed a complaint in objection to being taxed for the establishment and maintenance of a local high school. In 1874 the decision of the Kalamazoo case was handed down by the State Supreme Court of Michigan in favor of the defendants.²⁰ Thus, a precedent was set, as other state Supreme Courts

20

James Bowen, A History of Western Education (New York: St. Martin's Press, 1981), p. 364.

used the decision to give legal force to the collection of taxes for school purposes.

Poor school districts were forced to tax their wealth at a rate many times higher than that of rich districts, but they gleaned only a fraction of what their neighbors received in benefits.²¹ Thus, the problems of inequity in taxation and inequality in school programs and facilities began to surface, while taxpayers in local school districts began to seek help from state legislatures. Contributions by the states at first were small and uneven; however, by 1890 approximately twenty-four percent of the total school expenditures were borne by the states.²² This support was closer to fifty percent in the New England states, which remained the leaders in the field of education.

Twentieth-Century School Finance

The theory of state support for public education had its beginnings in the early years of the twentieth-century and was developed primarily by Ellwood P. Cubberley. Cubberley's concept and philosophy of state apportionments to local school districts are expressed in the following:

21

Coons, Clune, and Sugarman, op. cit., pp. 49-50.

22

Paul R. Mort, The National Survey of School Finance: State Support for Public Education (Washington, D. C.: American Council on Education, 1933), p. 26, cited by Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education (Englewood Cliffs, New Jersey: Prentice-Hall, 1975), p. 204.

Theoretically all the children of the state are equally important and are entitled to have the same advantages; practically this can never be quite true. The duty of the state is to secure for all as high a minimum of good instruction as is possible, but not to reduce all to this minimum; to equalize the advantages to all as nearly as can be done with the resources at hand; to place premium on those local efforts which will enable communities to rise above the legal minimum as far as possible; and to encourage communities to extend their educational energies to new and desirable undertakings.²³

During this period state allocations to local school districts were in the form of flat grants. Cubberley attacked this method because the grants did little to reduce the widespread inequalities. Much of his theory on school finance, therefore, centered on the reward for effort or incentive concepts, which were largely based on a school district's enrollment, average daily attendance, and the number of teachers employed.

While many of Cubberley's ideas were correct concerning early state allocations in that inequalities were not reduced, his reward-for-effort theories were later proved similarly inequitable. Nonetheless, Cubberley's contributions to the area of school finance and state responsibility cannot be overlooked.

The real theory of equalization is built upon the foundation or minimum program concept developed by George

23

Ellwood P. Cubberley, School Funds and Their Apportionment (New York: Teachers College, Columbia University, 1906), p. 17, cited by Percy E. Burrup and Vern Brimley, Jr., Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1982), p. 136.

D. Strayer and Robert M. Haig.²⁴ Although Strayer and Haig followed Cubberley's philosophy in developing their theories, they did reject the idea of reward for effort. Their plan was centered around a conceptual model for formulating a method of state support which included the following principles:

1. A foundation program should be devised around the rich district idea--each local district would levy the amount of local tax that was required in the richest district of the state to provide a foundation, or minimum, program. The rich district would receive no state funds; the other districts would receive state funds necessary to provide the foundation program.
2. All foundation programs should guarantee equality of educational opportunity up to a specified point, but all local districts should have the discretionary right to go beyond that point and provide a better program through tax-levy increases.
3. The program should be organized and administered to encourage local initiative and efficiency.
4. The features of the program should be defined in the law and should be objective and apply to all school districts of the state.
5. Foundation programs should be constructed, after thorough study and careful planning, around the needs and resources of each individual state.
6. The cost of the foundation program should include a major part of the cost of public education in that state.
7. The program should be organized so that no district receives additional funds because it is underassessed for property taxation purposes at the local level; uniform property assessment is essential in all foundation programs.

24

Johns and Morphet, op..cit., p. 210.

8. While the plan should encourage the reorganization of school districts into a reasonable number and the consolidation of attendance areas wherever practicable, provision must be made to avoid penalizing necessary small schools.
9. The foundation program should be a minimum and not a maximum program; local initiative and increased expenditures above the foundation program must be practicable in all the districts of a state.²⁵

The concepts of Strayer and Haig were later clarified by Paul R. Mort, who was a student of Strayer's at Teachers College, Columbia University, and later a colleague as well. While Mort accepted the conceptualization of Strayer and Haig, he advanced the concepts of the state-assured program to include the following elements:

1. An educational activity found in most or all communities throughout the state is acceptable as an element of an equalization program.
2. Unusual expenditures for meeting the general requirements due to causes over which a local community has little or no control may be recognized as required by the equalization program. If they arise from causes reasonably within the control of the community they cannot be considered as demanded by the equalization program.
3. Some communities offer more years of schooling or a more costly type of education than is common. If it can be established that unusual conditions require any such additional offerings, they may be recognized as a part of the equalization program.²⁶

25

Burrup and Brimley, op. cit., pp. 139-139.

26

Paul R. Mort, The Measurement of Educational Need (New York: Teachers College, Columbia University, 1924), pp. 6-7, cited by Johns and Morphet, op. cit., p. 212.

Mort clarified the three basic steps of the foundation plan, which were useful in order that states could determine the unit cost of the minimum program, the nature of the state-local financing partnerships, and the local ability to pay for education.²⁷ Hence, objective measures could be taken in the equalization efforts produced by state appropriations.

Mort is also credited with the concept of "weighting pupils" in order that additional costs of special programs be factored in the foundation program, a concept that is still used in school finance planning. Most of the flaws in the foundation method of school finance in reducing inequalities came as a result of the failure of states to implement the plan in totality. Several reasons have been cited for such failures, including political compromise, the static nature of support levels, the lack of flexibility in meeting local needs, continued use of flat grants, and the minimum rate basis of reducing state support from below.²⁸ Although the foundation plan may have fallen short in reducing inequalities, it remained as a primary model for state school finance schemes up into the 1960's.

The growth of education in America during the early decades of the twentieth century was phenomenal. Programs

27

Coons, Clune, and Sugarman, op. cit., pp. 66-68.

28

Ibid., pp. 68-70.

were expanded, curriculums were improved, attendance laws were passed, teacher-training programs underwent significant changes, the building and maintenance of schools increased by leaps and bounds, and the junior high school concept was accepted. All these have become a part in the American ideal of educating the masses. Still, questions of inequality lingered on in the minds of many. Rural education and the education of Negro children were filled with irregularities, inconsistencies, and inequalities in educational opportunities, which were a direct denial of state constitutional guarantees.²⁹

The right of the state to tax for educational purposes was an unsettled issue even during this time, as many people were unwilling to give up local control over the schools. In 1933 the Supreme Court of Minnesota interpreted the state constitution regarding education as a responsibility left squarely in the hands of the state.³⁰ Similar decisions related to state control, occurring before and after this time, have been made in other states including Kentucky (1909), Tennessee (1926), Indiana (1890), Michigan (1905) and Illinois (1948).³¹

By the middle decades of the twentieth century the

29

Knight, op. cit., pp. 562-563.

30

Arthur E. Wise, Rich Schools Poor Schools (Chicago: The University of Chicago Press, 1968), p. 94.

31

Ibid., pp. 95-104.

idea of state control had been firmly established. Although some setbacks in education were experienced due to the Great Depression of the thirties, and World War II in the forties, education continued its growth pattern during the fifties. At that time the problem of inequality in educational opportunity was brought to the forefront of national attention by the United States Supreme Court decision in Brown v. Board of Education,³² which struck down the doctrine of "separate but equal" schools for black children and ordered states having de jure segregation in their school systems to develop a unitary system of public education.

In the early 1960's some began to question the foundation method of state support that had long been used by states in allocating dollars to local school systems. Specifically, the work of Charles S. Benson in 1961 began to dismantle the myth that foundation programs used by the states provided equal educational opportunities.³³ Foundation programs in fact did little to reduce disparities found between rich and poor school districts. While the central thrust of President Lyndon Johnson's Great Society programs of the middle sixties was based largely upon the

32

Brown v. Board of Education, 347 U. S. 483 (1954).

33

Coons, Clune, and Sugarman, op. cit., p. 65.

theme of equal opportunity, of which education was perceived as the principal equalizing force, the problem of inequalities still existed, as "it was evident that property-rich school districts maintained an enormous advantage in available resources."³⁴

In the late 1960's the constitutionality of school finance systems in Illinois³⁵ and Virginia³⁶ was challenged because of the inequities produced by wide variations in per pupil expenditures. However, it was 1971 in the landmark case of Serrano v. Priest before any serious thought was given to changing school finance practices. The California Supreme Court ruled that the state's method of financing public schools violated the equal protection clause of the Fourteenth Amendment, because it discriminated on the basis of wealth.³⁷

By 1973 state or federal courts had rendered similar decisions in Minnesota, New Jersey, Arizona, Wyoming, Kansas, and Michigan.³⁸ Thus, for the first time in the history

34

John Pincus, School Finance in Transition (Cambridge, Massachusetts: Ballinger Publishing Company, 1974), p. 2.

35

McInnis v. Shapiro, 293 F. Supp. 327 (N. D. Ill. 1968).

36

Burrus v. Wilkerson, 310 F. Supp. 572 (W. D. Va. 1969).

37

Serrano v. Priest, 96 Cal. Rptr. 601 (1971).

38

Robert D. Reischauer and Robert W. Hartman, Reforming School Finance (Washington, D. C.: The Brookings Institute, 1973), pp. 49-50.

of American education the courts began to exercise influence and pressure on the states to ameliorate their methods of school finance. However, the movement to reform state funding practices was momentarily truncated by the United States Supreme Court in the case of San Antonio Independent School District v. Rodriguez.³⁹ The court ruled in a 5-4 decision "that the Texas school finance program, with its heavy reliance on the local property tax, did not violate the equal protection clause of the 14th Amendment to the Constitution".⁴⁰

In the search for state funding schemes that better promote equalization, it is ironic that two finance theories of the early decades of the twentieth century have been revived. One such theory which has been credited to Henry C. Morrison incorporated the ideas of using income tax in lieu of property tax, having a one-district school system for the entire state, and the use of full state funding for education. Since education during this time was still controlled by the local school districts, Morrison's ideas were not well received. However, it is interesting to note that today Hawaii utilizes a one-district school system

39

411 U. S. 1 (1973).

40

Thomas J. Flygare, "School Finance a Decade After Rodriguez", Phi Delta Kappan, LXIV (March, 1983), 477.

with full state funding.⁴¹

Another funding plan that has been brought back to life in recent years is known as power equalization. This plan was developed by Harlan Updegraff in 1922. Although it was rejected in favor of the concepts advanced by Strayer and Mort, it has more recently been rediscovered by Coons, Clune, and Sugarman.⁴² The power equalization plan proposes that a foundation program be established, with the state and local school district each contributing a predetermined percentage of school expenditures. The state's share or percentage is higher in poor districts than rich; hence, the plan is viewed as having equalizing effects.⁴³

Today, a number of plans are being used by the states for the allocation of funds to local school districts. Many incorporate a combination or a variation of equalizing grants, foundation programs, and power or percentage equalization schemes. However, the ultimate method of school finance, the one that will be most propitious for all concerned, still awaits discovery:

While the choice of financing programs is great, at this point in school finance reform there are no perfect systems for distributing state funds to local

41

Burrup and Brimley, op. cit., p. 141.

42

Johns and Morphet, op. cit., pp. 209-210.

43

Charles S. Benson, The Economics of Public Education (Boston: Houghton Miffling Company, 1968), p. 148.

school districts. Each plan has limitations and falls short of equalizing financial resources to the complete satisfaction of all the people concerned. Some systems are better than others and some states make greater efforts to improve than others. With the inequalities and the inequities that exist in almost every state plan there is no room for any degree of complacency in viewing school finance reform in any state. Certainly, there is little justification for maintaining or preserving traditional methods until a panacea formula is discovered, or invented.⁴⁴

School finance will continue to play an important role in the field of education, just as it has over the last three hundred years in America. While educators face many problems, the importance of school finance has been succinctly stated in a report by the Rockefeller Brothers Fund on education: "All the problems of the schools lead us back sooner or later to one basic problem -- financing."⁴⁵

Thus far this chapter has been concerned with the history and development of American school finance practices. While it is recognized that various states have taken somewhat different approaches to education and finance, some congruencies in finance practices among the states have been recognized along with the apparent differences. The remainder of this chapter will be devoted to the history and development of school finance in one particular state -- North Carolina.

44

Burrupe and Brimley, op. cit., p. 256.

45

Rockefeller Brothers Fund, The Pursuit of Excellence: Education and the Future of America, Panel Report V of the Special Studies Project (New York: Doubleday and Company, inc., 1958), p. 38, cited by Benson, op. cit., p. 3.

A HISTORY OF SCHOOL FINANCE IN NORTH CAROLINA

School Finance Before 1868

Similar to other colonies in the new world, North Carolina had in its origins of education a marked link with the church. Missionaries from the established Church of England were early advocates of education, as they built churches and schools as they moved about. Charles Griffin, an Episcopal teacher and lay reader, established a school in the Pasquotank precinct in 1706.⁴⁶ Later Griffin moved to Chowan precinct and established another school. In 1712 a school was reported to have existed in the present town of Ahoskie, although due to the lack of funds this school, along with the one in Chowan, vanished.⁴⁷

Early legislation for the establishment of a school-house was made by town commissioners of Edenton in 1745. In 1754 the General Assembly appropriated funds for a school in the province, although the school was never built as the funds were used for war and other purposes.⁴⁸ It is noted that the school in Edenton was aided by the gift of lots and public purse monies, but not funds raised by

46

M. C. S. Noble, A History of the Public Schools of North Carolina (Chapel Hill, North Carolina: The University of North Carolina Press, 1930), p. 71.

47

Ibid., pp. 8-9.

48

Edgar W. Knight, Public School Education in North Carolina (Cambridge, Massachusetts: The Riverside Press, 1916), p. 35.

taxation. . The beginning of state aid to education through the use of taxation came in 1766 with the building of a public school in New Bern.⁴⁹

The first significant step in the development of the public education ideal came in 1776 with the adoption of a constitutional provision stating that

A school or schools shall be established by the Legislature for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may able them to instruct at low prices...⁵⁰

No further legislation for public education came until 1825 when a bill was introduced to create a fund for the support of common schools. As in other parts of the country the growth and development of the free school idea was slow in coming to North Carolina. Basically, two important principles hindered the maturation process.

1. The democratic principle that education is the function of the State rather than a family function or a parental obligation and that the responsibility of providing the means of education rests primarily with the State.
2. The State has the power and the right to raise by taxation on the property of its members sufficient funds for adequate school support.⁵¹

These two principles later gained wide acceptance, of which the beginning can be traced to the passage of "The Literary Fund Law of 1825." The Act creating the fund defined its

49
Ibid., pp. 37-38.

50
Ibid., p. 64.

51
Ibid., pp. 84-85.

sources as follows:

The dividends arising from the stock now held by the State in the banks of Newbern and Cape Fear and which have not heretofore been pledged and set apart for internal improvements; the dividends arising from stock which is owned by the State in the Cape Fear Navigation Company, the Roanoke Navigation Company, and the Clubfoot and Harlow Creek Canal Company; the tax imposed by law on licenses to the retailers of spirituous liquors and auctioneers; the unexpended balance of the Agricultural Fund, which by the act of the Legislature is directed to be paid into the public treasury; all moneys paid to the State for the entries of vacant lands (except the Cherokee lands); the sum of twenty-one thousand and ninety dollars, which was paid by this State to certain Cherokee Indians, for reservations to lands secured by them by treaty, when the said sums shall be received from the United States by this State; and of all the vacant and unappropriated swamp lands in this State, together with such sums of money as the Legislature may hereafter find it convenient to appropriate from time to time.⁵²

Although growth of the Literary Fund was slow at first, with little occurring in the way of school construction, these conditions were destined to improve. In 1836 by an Act of Congress, federal aid was given to the states with North Carolina receiving \$1,433,757.39.⁵³ By November of 1840 the Literary Fund had accumulated a balance of \$2,241,480.05.⁵⁴

After a lengthy struggle in the legislature, the first

52

Charles L. Coon, The Beginnings of Public Education in North Carolina (Raleigh, North Carolina: Edwards and Broughton Printing Company, 1908), pp. 280-281.

53

Noble, op. cit., p. 49.

54

Knight, op. cit., p. 95.

public school law was passed in January, 1839. The bill was introduced in the Senate as the "Cherry Bill," named after its designer William W. Cherry, and was known as "An Act to divide the Counties into School Districts, and for other purposes."⁵⁵ The importance of this piece of legislation cannot be overlooked, as it represents the beginnings of an organized, uniform, and state-wide system of public elementary schools. This new law, "called upon the people to vote for or against a tax for the support of common schools."⁵⁶ By having to vote on a "school" or "no school" ballot, the pressure was intense to vote for the tax. The bill also provided that

The county court in each county that had voted in favor of schools, at its first session after the election should elect not less than five nor more than ten persons "as superintendents of common schools" for the county. The superintendents were to divide the county into districts not more than six miles square "provided that no greater number of districts should be laid off in any county than shall be equal to one for every six miles square of inhabited territory in said count." The superintendents were also to appoint not less than three or more than six "committeemen" in each district to assist them "in all matters relating to the establishment of schools for their respective districts." The county courts in those counties that voted in favor of schools, at the first term of court after the first Monday in January, 1840, were to levy and collect a tax sufficient to give twenty dollars to each district in the county. For every twenty dollars thus raised by taxation, forty dollars would be paid to the county from the Literary Fund, and the two sums together would amount to sixty dollars for

55
Noble, op. cit., p. 59.

56
Ibid., p. 60.

the school in each district.⁵⁷

During the first year of this endowment contributions totaling \$2400 were made:

To Tyrrell County for thirteen districts, \$520; to Cherokee County for sixteen districts, \$640; to Richmond County for twenty-two districts, \$880; and to Macon County for nine districts, the sum of \$360.⁵⁸

The fund was creditable, as it stimulated local educational effort throughout all parts of the State.⁵⁹

While the passage of legislation, the "Cherry Bill" and the Act of 1839, gave a tremendous boost to the funding of education in North Carolina, organization and administration of the schools suffered from the lack of any real guidelines. Nothing had been established as to how teachers were to be hired or what their qualifications should entail. Neither the length of the school term nor the subjects to be taught had been addressed. The state public school system was void of any central control, which was badly needed by the county and local school districts.⁶⁰

Steps were taken by the Legislature in 1841 to improve these conditions by the passage of an Act known as the "Better Regulation of the Common Schools Act." This law provided for the following:

57

Ibid., pp. 60-61.

58

Knight, op. cit., pp. 97-98.

59

Ibid., p. 98.

60

Noble, op. cit., p. 61.

The net annual income from the literary fund was to be distributed to the various counties on the basis of their federal population, and the county court was authorized to levy a school tax not to exceed one half of the estimated amount which the county was entitled to receive from this source. Three district trustees were to be elected by popular vote for every district in the county and these offices were to have general charge of the local schools -- to provide the houses, take the school census, employ teachers, and visit the schools. The curriculum included "any branch of English education," and the schools were open to all white children between five and twenty-one years of age.⁶¹

Other laws were passed from time to time that sought further improvement in the school system, but inefficiency prevailed throughout the state until the early 1850's.

The laws relating to public education were distributed by the governor's office in 1849 in an attempt to remove widespread deficiencies in organization, accountability, and general management. However, the report made by the governor to the Legislature in 1850 showed only about half of the counties making required reports on population, enrollment, accounts, and length of the school term.⁶²

Although progress in the system of public instruction was made during the ante-bellum period in North Carolina, the election of Calvin H. Wiley as the first state Superintendent in 1852 marked a significant event in the

⁶¹ Knight, op. cit., p. 147.

⁶² Ibid., pp. 153-154.

history of the state. "Wiley revolutionized the system and made it a credit to North Carolina."⁶³ He proved to be just what the system of public schools of North Carolina needed.

He stimulated interest and faithfulness among the county boards of education, improved the character and quality of teachers, and brought more effective organization of the schools. Among the significant changes and improvements were the certification of teachers after examination, improvement in textbooks, better buildings and equipment, the establishment of school libraries, the beginning of graded schools, the formation of teachers' library associations, the organization of the Education Association of North Carolina, and the publication of the North Carolina Journal of Education (1857).⁶⁴

During the period 1853 to 1860, under Wiley's leadership, the system grew in the number of districts, schools, children, certified teachers, and funds. School expenditures during this period increased from \$150,000 to \$278,000, of which about \$100,000 came from local taxation.⁶⁵ Thus, North Carolina's system of common schools was comparable to many of the systems found in the New England states. "Except for details of administration, perhaps, educational custom in the United States before 1860 was very similar in every section of the country."⁶⁶

63

Hugh Talmage Lefler and Albert Ray Newsome, The History of a Southern State: North Carolina (Chapel Hill, North Carolina: The University of North Carolina Press, 1954), p. 380.

64

Ibid.

65

Noble, op. cit. pp. 226-227.

66

Knight, op. cit., p. 218.

However, the effects of the Civil War were disastrous to North Carolina's system of common schools. While almost every aspect of education was in some way touched, the main source of school support, the Literary Fund, was almost completely annihilated. Without funds there was no means of immediately restoring the war losses.

Legislation between the end of the war and the structuring of a new constitution was of little significance. However, in March of 1866 a law was passed that

Allowed the justices of the county courts to lay and collect taxes at their discretion for common-school support; and county school communities were given discretionary powers to grant aid, "to the extent they may be authorized by the court, to subscription schools, the teachers of which have qualifications prescribed for teachers of the common schools, and to allow such school to be carried on in the schoolrooms of their districts."⁶⁷

Other legislation passed in 1866-67

Authorized town and cities to establish public-school systems "to be supported by the taxes collected or authorized to be called for corporation purposes." "...towns which established schools under the provisions ..." shall be authorized to levy and collect a poll-tax on every white male inhabitant of the corporation, over twenty-one years old, of not more than two dollars, to be wholly appropriated to the use of the public schools."⁶⁸

These laws represent a continued interest in a system of public education during the difficult years following the Civil War. However, the next significant step for education would come with the rewriting of the state

67

Ibid., p. 222.

68

Ibid., pp. 224-225.

constitution, in order that the Congressional Plan of Reconstruction be complied with.

School Finance After the Constitution of 1868

When the convention of 1868 assembled there was little doubt as to the importance of education, as the newly formed constitution contained an entire article addressing the subject. Support for education was clearly delineated in Article IX of the Constitution, which stated:

The legislature should provide by taxation or otherwise for a general and uniform system of public schools, and it further provided that a four months' school should be maintained in every district ... Three-fourths of the poll tax was assigned to the school fund. The commissioners of each county were to levy taxes for sites and for buildings or renting school houses...⁶⁹

The Constitution further provided for the remains of the Literary Fund to be distributed among the counties of the state on the basis of the school census. Additionally, the 1869 General Assembly appropriated \$100,000 for the public schools.⁷⁰

Legislation passed in 1871-72 called for a state tax levy of 6 2/3 cents on each \$100 valuation of property and 20 cents on each poll for public education. This tax was to be collected and used in the counties. Although the tax was increased in 1872-73, the maintenance of the required

69

J. G. de Roulhac Hamilton, History of North Carolina, III (Chicago: The Lewis Publishing Company, 1919), 351-352.

70

Lefler and Newsome, op. cit. p. 500.

four-month school term was still a problem. Primarily, this was due to the limited power of town officers and county commissioners to levy special taxation without the vote of the people. This legislation had been passed by virtue of the earlier Lane v. Stanly⁷¹ decision by the North Carolina Supreme Court in 1870.

Educational growth during the Reconstruction period was slow as many of the state's citizens feared the possibility of mixed schools. However, this concern was laid to rest by a constitutional change in 1875-76 that required separate schools for the children of the two races. In 1877 two other significant educational acts were passed: one established two normal schools for the training of teachers, and the other gave authority to certain townships, based on population, to levy taxes for public school support.

The law required a majority of the qualified voters of the township to favor the levy before the tax could be legal. When legally ordered, however, a property tax of one tenth of one per cent and a capitation tax of thirty cents could be collected for educational purposes. The former property tax of eight and one third cents and the capitation tax of twenty cents were continued for general school support.⁷²

For ten years, 1871-1881, state statutes prohibited county and town officials from fulfilling their

71

Lane v. Stanly, 65 N. C. 153 (1871).

72

Knight, op. cit.. 262.

constitutional obligations. However, conditions were improved by laws passed in 1881 and 1885, which permitted commissioners to levy special taxation to provide the "four month school term or more," without a county referendum.⁷³ This law was subsequently challenged, shortly after the General Assembly adjourned in 1885, by taxpayers in Sampson County.⁷⁴ The state Supreme Court ruled in favor of the plaintiffs.

The Supreme Court, in effect, ruled that education was not a "necessary expense" in the meaning of the Constitution. Thus, the constitutional provisions that provided conflict between education and taxation were ruled in favor of taxation, thereby sacrificing education. This constitutional interpretation by the North Carolina Supreme Court held until 1907.

The practical effect of the majority opinion of our Supreme Court in the Barksdale case was to doom the counties to be content with public schools conducted for much less than four months in every year. By 1885 only Greensboro, Raleigh, Salisbury, Goldsboro, Wilmington, Fayetteville, Durham, Charlotte, and a few other towns had established schools for as long as 180 days in the year by special local taxation approved by a vote of the people; permission to do so in each instance having been first granted by special legislative enactment. Indeed, the average school term of the State as late as 1890 was considerably less than

73

Charles L. Coon, School Support and Our North Carolina Courts (Raleigh, North Carolina: Edwards and Broughton Company, 1926), pp. 10-12.

74

Barksdale v. Commissioners, 93 N. C. 473 (1885).

the pitifully inadequate term of 60 days in each year.⁷⁵

However, better days for public education were destined to come in the early years of the twentieth century.

Under the leadership of Charles B. Aycock and generally prosperous economic conditions, North Carolina educational development grew at a phenomenal rate during the first decade of the 1900's.

Nearly 3,000 schoolhouses were built -- an average of about one a day; the total annual cost of public schools mounted from about \$1,000,000 to more than \$3,000,000; the total value of school property increased from \$1,000,000 to more than \$5,000,000; the annual state appropriation for equalizing the school term among the counties more than doubled; the state government began the policy of loaning money to aid counties in building and improving schoolhouses; ... the number of special tax districts was increased from 18 to 1,167, and rural school libraries from 472 to 2,272; the state began in 1907 the policy of extending financial aid to high schools, and 200 rural high schools were established in 93 counties by 1911; nearly a month was added to the length of the public school term, and enrollment and average daily attendance was increased, as well as teachers' salaries; a compulsory school law was enacted in 1907...⁷⁶

Even more impressive growth took place in the schools during the next twenty years, 1910 to 1930, as the legislature lengthened the minimum school term from four to six months in 1918.

From 1910 to 1930 the total value of public school property increased twenty-two fold to \$110,000,000 and the total annual expenditures,

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Coon, op. cit., p. 16.

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Lefler and Newsome, op. cit., p. 552.

eleven-fold to \$33,000,000, of which the state's contribution amounted to about \$6,500,000. In the 1920's the percentage of teachers and principals with at least four years of college training trebled. The log and one-room schoolhouse almost disappeared, giving way to modern frame, brick or stone structures. To up-to-date, rural consolidated schools over improved highways, school buses brought children: in 1930 4,046 buses transported 181,494 children to 1,260 schools at a cost of over \$2,250,000. The number of high school graduates increased from 510 in 1910 to 10,466 in 1925... The average annual salary of teachers increased from \$465 to \$850 and the average school term 134 to 154 days ... The annual current expense per pupil rose from \$20.21 in 1920 to \$42.53 in 1930.⁷⁷

This phenomenal growth of economic conditions and schools during the first three decades of the twentieth century came tumbling down with the Great Depression of the early thirties.

The Depression brought lower incomes and a significant decline in property value. All levels of government suffered enormous tax losses, which resulted in a reduction of government services including a pay cut for the teachers in the public schools. In order to keep the school doors open and reduce local taxation during these difficult times, state support was increased dramatically. In 1933 the legislature took over almost entirely the expenditures for public school education and at the same time increased the minimum school term to eight months.⁷⁸ By 1943 state appropriations for education included a

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Ibid., pp. 552-553.

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N. C. Public Laws 1933, chap. 562.

pension and retirement system for teachers and a nine-month school year, with the twelfth grade allocations appearing shortly thereafter.⁷⁹

North Carolina has continued to increase appropriations for public school education and continues to utilize a flat grant system of finance in allocating funds to the 142 local school units. This method of finance has a positive effect on reducing educational disparities that might otherwise be produced if other state funding schemes were used. Ostensibly, local financial support is required only for capital costs and plant maintenance. However, some school systems receive local dollars at a much greater rate than others. Because of this, educational disparities can yet be found among the public schools of North Carolina.

⁷⁹

Lefler and Newsome, op. cit., pp. 585-588.

CHAPTER III

THE LEGAL ASPECTS OF LOCAL FINANCIAL SUPPORT
FOR PUBLIC EDUCATION IN NORTH CAROLINA

THE STATE CONSTITUTION AND SUBSEQUENT LEGISLATION

North Carolina has recognized the importance of education since the adoption of the first State Constitution in 1776, which provided "that a school or schools shall be established by the Legislature for the convenient instruction of youth..."¹ Although the Constitution was rewritten in 1868 and underwent several amendment changes in 1875, education has maintained its inveterate prominence throughout the state's history. As confirmed in Article IX of the Constitution:

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.²

Education A Legal Right

Education is a duty imposed on the State under Article IX of the Constitution, and has been cited as such by the State

¹
N. C. Const. art XLI (1776).

²
N. C. Const. art IX, § 1.

Supreme Court.³

Clearly, the legal right to a public school education in North Carolina rests within the Constitution which so states: "The people have a right to the privilege of education and it is the duty of the State to guard and maintain that right."⁴

Support From Taxation

The framework providing for financial support for a system of public schools can also be found in North Carolina's Constitution.

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall provide for all students.⁵

In addition to State support for public education, local responsibility has been constitutionally established:

The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school....⁶

It is clear that the Constitution of 1868 provided for

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Harris v. Bd. of Commissioners, 274 N. C. 343, 163 S. E. 2d 387 (1968); Mebane Graded School District v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937).

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N. C. Const. art. I, § 27.

5.

N. C. Const. art. IX, § 2.

6

Ibid.

support of public schools through taxation. Today, this method seems almost incidental, but at that time it was, in fact, the first time for "real taxation" supporting public schools. Thus, controversy brought on by tax haters reached the courts shortly after county commissioners began levying taxes for school purposes. In Lane v. Stanly the State Supreme Court sided with taxpayers by holding that

Townships have not the power of taxation for school purposes, either through their trustees or committees. Nor has a county the power to levy township taxes, as distinguished from the general county tax for school purposes. And in laying the county tax for school purposes, the equation of taxation must be observed.⁷

Had this Craven County case been decided in favor of education, the history of school funding in North Carolina would have, in all probability, been written differently.

From 1871 to 1881, ten years, it was against the statute law of North Carolina for the commissioners of any county to levy enough county tax to maintain at least a four months school without a vote of the people, even though the Constitution did solemnly declare they must be indicted, if they failed to provide sufficient funds to maintain the minimum term in every district.⁸

In 1881 the General Assembly revised school statutes by providing a state tax of 12½ cents on each \$100 valuation of property and 37½ cents on each taxable poll for

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Lane v. Stanly, 65 N. C. 153 (1871).

8

Charles L. Coon, School Support and Our North Carolina Courts (Raleigh, North Carolina: Edwards and Broughton Company, 1926), p. 11.

support of the public schools. In addition, local support was lawful:

If the tax levied in this act for the support of public schools shall be insufficient to maintain one or more schools in each district for a period of four months, then the county commissioners of each county shall levy annually a special tax to supply the deficiency for the support and maintenance of said schools for the said period of four months.⁹

Legislative action in 1885 reiterated the support given to schools by the General Assembly of 1881 and 1883. Coon summarized the general opinion of the legislature in the following:

The minimum school term of at least four months must be maintained by the commissioners by special county taxation, if necessary, without a favorable referendum to the people of the county; that the limitations on the tax rate imposed by section 1 of Article V of the Constitution did not operate to prevent the establishment of public schools in every district for the minimum term, at least; and that, in so far as that minimum term was concerned, section 7 of Article VII of the Constitution did not operate to compel a favorable referendum to people of the special tax rate levied in support of that minimum term.¹⁰

In addition, the General Assembly of 1885 took a significant step toward increasing local support for public education by enacting legislation allowing county commissioners to levy a special tax, "for the period of four months or more."¹¹ Thus, it was clearly implied that the special tax was not limited to the four-month school term.

⁹ North Carolina Laws of 1881, chap. 200.

¹⁰ Coon, op. cit., p. 12.

¹¹ North Carolina Laws of 1885, chap. 174, § 23.

Shortly after the adjournment of the 1885 General Assembly, Sampson County commissioners levied enough tax to provide for a four-month school term. S. Barksdale and other citizens challenged the constitutionality of the levy, of which the Superior Court of Sampson County sustained their contentions. The defendant commissioners appealed to the North Carolina Supreme Court, but the opinion of the lower court was upheld.¹² The Supreme Court, in essence, ruled that education was not a necessary expense; however, the opinion was not unanimous. Justice A. S. Merrimon filed a dissenting opinion that became the majority opinion some twenty-two years later.

He declared with great force that our Constitution did not contain any limitation of taxation which could be invoked against the maintenance of the minimum four months school term.¹³

The issue of taxation was again challenged, this time by the Bladen County Board of Education in 1892,¹⁴ but efforts to reverse the Barksdale decision remained fruitless until 1907. In that year the Supreme Court reversed the prohibitions of the Barksdale decision in Collie v. Commissioners case out of Franklin County.¹⁵ However, the decision was not

12

Barksdale v. Commissioners, 93 N. C. 473 (1885).

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Coon, op. cit., p. 15.

14

Board of Education of Bladen County v. Board of Commissioners of Bladen County, 111 N. C. 578 (1892).

15

Collie v. Commissioners, 145 N. C. 170 (1907).

a total victory for education, as the high court stopped short of allowing special taxation for a school term longer than four months.

Cases involving local support for graded school districts for both white and Negro children found their way to the courts during the 1880's. The General Assembly passed a number of special acts enabling towns to establish graded schools and to legalize the race division by special taxation. The issue, however, was laid to rest in 1886 as the State Supreme Court decided the practice was unconstitutional.¹⁶ Similarly, an attempt by Greensboro citizens to have taxes paid to the county returned to the graded schools of Greensboro was found unconstitutional by the high court.¹⁷

While the Collie decision may have been in some respects a glorious day for public education, the struggle for adequate school support was not over. In 1909 the Board of Education of Cherokee County submitted to the commissioners an estimate of the amount of money necessary to maintain the schools for four months, along with the amount of additional tax to be levied. The county commissioners refused to levy the additional tax, claiming it was too large. The North Carolina Supreme Court stated that, "the decision concerning

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Puitt v. Commissioners, 94 N. C. 709; see also Riggsbee v. Town of Durham, 94 N. C. 800 (1886).

17

The City of Greensboro v. J. A. Hodgkin, Treasurer, 106 N. C. 182 (1890).

the tax levy was with the Board of Commissioners."¹⁸

The levy of special taxation for high school instruction purposes arose in 1917 in Granville County. The commissioners refused to levy the amount of tax asked for by the board of education, claiming that high schools were not part of the public school system. The Supreme Court, however, concluded that, "nothing in Article IX of the Constitution limited the public schools to the elementary grades."¹⁹

It is noted that, from 1903 to 1917 under the school statutes, "it was unlawful for the county boards of education to pay more than half the cost of the erection of any school building out of the general county public school fund."²⁰ This prohibition was made in order to conserve school funds for the payment of teachers' salaries. However, legislation was passed in 1918 increasing the minimum school term to six months and in 1919 a more effective compulsory school law was passed. The need for better school buildings became evident, and the costs of school facilities was to be another local funding issue that would be decided by the courts. The Supreme Court of North Carolina ruled in 1919 that school buildings must be included as part of the "necessary expense"

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The County Board of Education of Cherokee County v. The Board of Commissioners of Cherokee County, 150 N. C. 116 (1909).

19

Bd. of Educ. v. Bd. of Comm., 174 N. C. 469 (1917).

20

Coon, op. cit., p. 25.

of maintaining the minimum six-month school term.²¹

Due to rapid growth of the state public school system, combined with the inclusion of school buildings as a necessary expense for maintenance of the minimum school term, funding methods proved to be wholly inadequate. In order to meet the demand for more and better school buildings, the 1921 General Assembly authorized \$5,000,000 worth of state bonds. Proceeds from bonds were loaned to counties in the form of a special building fund.

Every loan made from the five million dollar fund must first have been endorsed by the county commissioners on the application of the county board of education; that any loan to a county was to be repaid to the State in twenty annual installments with interest, all provided for by the board of education in its annual school budget; that the commissioners must agree to levy an annual building fund tax to care for the proper liquidation of any such loan made to the county; and that before any loan could be made to any county the board of education and the board of county commissioners must all make affidavit that the loan was necessary and required to aide in providing a six months school.²²

The constitutionality of the "bond statute" was challenged by taxpayers of Rockingham County in 1924. However, in Lovelace v. Pratt, the Supreme Court of North Carolina validated \$45,000 worth of bonds to be used in the construction of two schoolhouses in two districts of that county.²³

21

Board of Education of Alamance County v. Board of Commissioners, 178 N. C. 305 (1919).

22

Coon, op. cit., p. 30.

23

Lovelace v. Pratt, 187 N. C. 686 (1924).

With the passage of the School Machinery Act of 1933, the State took over the bulk of the operating expenses of the public schools. This act abolished the state ad valorem property tax and established a general state sales tax for the purpose of financing the public schools. Thus, local responsibility for education was reduced dramatically, although in recent years an upsurge in the use of local revenues for public school support has been quite noticeable.

THE BUDGET PROCESS

Uniform Budget Format

The local process of budgeting for school purposes has undergone a number of changes over the years. Before the turn of the twentieth century, budgeting was a matter of the local board of education submitting an estimate of the amount of monies needed to maintain the required public school term. Today, however, the elaborate process of school budgeting is governed by the School Budget and Fiscal Control Act, adopted in 1975, and codified as General Statute sections 115C-422 to 115C-457 under Article 31 of Chapter 115C.

The enactment of this article by the General Assembly provided the public schools of North Carolina with a uniform system of budgeting and fiscal control. The Act thus states:

All provisions of general laws and local acts in effect as of July 1, 1976, and in conflict with the provisions of this Article are repealed except local acts providing for the levy or for the levy and collection of school supplemental taxes. No local act enacted or taking effect after July 1, 1976, may be construed to modify, amend, or repeal any portion of

this Article unless it expressly so provides by specific reference to the appropriate section.²⁴

The law further requires each local administrative unit to operate under an annual balanced budget resolution, which shall cover one fiscal year.

A budget resolution is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations... all moneys received and expended by a local school administrative unit should be included in the school budget resolution.²⁵

The balanced budget resolution must be in accordance with the uniform budget format which requires the promulgation of the State Public School Fund, the local current expense fund and the capital outlay fund.²⁶

Specifically, the local current expense fund must, by law, bridge the gap between state appropriations and the amount needed to operate the minimum school term.

The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners.²⁷

Under North Carolina law, the superintendent is required to submit the budget for the ensuing year, along with the

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N. C. Gen. Stat. § 115C-424.

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N. C. Gen. Stat. §§ 115C-424 (a), - 425 (b).

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N. C. Gen. Stat. § 115C-426 (c).

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N. C. Gen. Stat. § 115C-426 (e).

budget message to the local board of education on, or before May 1 of each year.²⁸ The proposed budget must also be made available for public inspection until the adoption of the budget resolution, which occurs at a later date.²⁹ After receiving the proposed budget from the superintendent, the local board of education must review and make any necessary changes before submitting the budget to the board of county commissioners by May 15, or at a later date set by the commissioners.³⁰ Action on the budget must be taken by the commissioners on or before July 1, or at a later date, if agreeable to the board of education.³¹ Once the budget has been approved by the commissioners, the board of education must consummate the budget process by adopting a budget resolution to govern expenditures of the school system for the budget year.³² In the event that more than one local school administrative unit is located within a county, local current expense funds must be apportioned to the units, based on membership of students, by the county commissioners.³³

28
N. C. Gen. Stat. § 115C-427 (b).

29
N. C. Gen. Stat. § 115C-428 (a).

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N. C. Gen. Stat. § 115C-429 (a).

31
N. C. Gen. Stat. § 115C-429 (b).

32
N. C. Gen. Stat. § 115C-432 (a).

33
N. C. Gen. Stat. § 115C-430.

Budget Disputes

While the General Statutes govern the budget process with explicit detail, controversy over the budget itself never seems far away. Frequently, the local board of education and the board of county commissioners cannot agree on the number of dollars needed for the operation of the school system. In such cases legal proceedings may be taken under General Statute § 115C-431. Within seven days after the commissioners announce their appropriation, the chairmen of the two boards must arrange a joint meeting in order for the boards to review the entire budget in an attempt to resolve their differences.³⁴ If no agreement can be reached, either board may refer the dispute to the County Clerk of Superior Court within three days of the joint meeting. The clerk must render a decision on the proper amount needed to fund the operation of the schools within ten days after the matter has been referred to the court.³⁵ Either board has the option of appealing the clerk's decision within ten days to the Superior Court of the county. The issue is then tried by a judge or, at the request of either board, may be tried by a jury. The Superior Court, after hearing the case, shall determine the appropriate amount of money needed for the schools, and order the county commissioners to levy the amount of tax necessary

³⁴ N. C. Gen. Stat. § 115C-431 (a).

³⁵ N. C. Gen. Stat. § 115C-432 (b).

to fund the schools after taking into consideration other available revenues.³⁶ If the Superior Court decision is taken to the appellate division of the General Court of Justice, then commissioners must furnish the school system with a sufficient sum of money until a final decision is reached.³⁷ Should the final judgment fall against the board of commissioners, they are authorized to levy a supplementary tax, as required by the judgment, in order to furnish the necessary funds to the school system.³⁸

In 1909 the board of education of Cherokee County and the county board of commissioners disagreed over the amount of money needed to operate schools for the ensuing year. The North Carolina Supreme Court in Board of Education v. Commissioners, held the decision of funding rests with the county board of commissioners.³⁹ In 1919, the court in Board of Education of Alamance County v. Board of Commissioners of Alamance County took the opposite view as it held in favor of the board of education.⁴⁰ In a budget dispute case out of Onslow County, the findings of a Superior Court Justice in Board of Education v. Commissioners of Onslow County were upheld upon

³⁶ N. C. Gen. Stat. § 115C-432 (c).

³⁷ N. C. Gen. Stat. § 115C-432 (d).

³⁸ N. C. Gen. Stat. § 115C-432 (e).

³⁹ Board of Ed. v. Commissioners, 150 N. C. 116 (1909).

⁴⁰ Board of Education of Alamance County v. Board of Commissioners of Alamance County, 178 N. C. 305 (1919).

appeal to the State Supreme Court.⁴¹ The Superior Court determined that the amount of funds necessary to operate the schools was below what the school board had requested but above the dollar figure approved by the county commissioners. This 1954 case was litigated under similar statutory laws as set forth in General Statute § 115C-431, which is the current law regulating budget disputes.

In a 1960 case, Whitewille City Administrative Unit v. Columbus County Board of County Commissioners, the North Carolina Supreme Court reviewed the budgetary and disagreement provisions of the general statutes.⁴²

The basic philosophy with respect to the operation of our school system remains. It is the duty of the board of education to evaluate their needs, apply to the board of county commissioners for funds to supply the needs, and when funds are appropriated, to spend the same within the designated classification, current expenses and capital outlay, as will best serve school needs. It is the duty of county commissioners to study the request for funds filed with them by the board of education and to provide by taxation such funds, as may be needed for economical administration of schools.⁴³

Thus, the North Carolina Supreme Court sustained the responsibility of county commissioners to determine resources needed by school boards to economically administer educational programs within the county.

⁴¹ Board of Education v. Commissioners of Onslow County, 240 N. C. 118 (1954).

⁴² Whitewille City Administrative Unit v. Columbus County Board of County Commissioners, 251 N. C. 826, 112 S. E. 2d 539 (1960).

⁴³ Ibid., at 542-543.

In 1973 the Wilson County Board of Education submitted their 1973-74 budget requests to the board of county commissioners. The request included the school superintendent's salary supplement. The commissioners reviewed the proposed budget, and refused to fund the school superintendent's supplement at the requested level. The school board filed for relief before the Wilson County Superior Court and the court entered judgment in favor of the school board. The board of county commissioners took exception to the decision, and appealed to the North Carolina Court of Appeals. The Appeal's Court in Wilson County Board of Education v. Wilson County Board of Commissioners, remanded the case to Superior Court in order to determine if the salary item was necessary for the maintenance of the schools.⁴⁴

A decision by the Superior Court of Lenoir County in Kinston City Board of Education v. Board of Commissioners of Lenoir County, was upheld in 1976 by the North Carolina Court of Appeals. The Lenoir County Commissioners refused to fund the capital outlay budget requested by the Kinston City Board of Education. A jury trial was held and judgment favored the board of education. On appeal the North Carolina Appeals Court upheld the Superior Court Judge's decision to allow jurors from another county to render a verdict in the case. The Court of Appeals held:

⁴⁴Wilson County Board of Education v. Wilson County Board of Commissioners, 26 N. C. App. 114, 215 S. E. 2d 412 (1975).

... any judge of the superior court, if he is of the opinion that it is necessary in order to provide a fair trial in any case ... may order as many jurors as he deems necessary to be summoned from any county or counties in the same judicial district as the county of trial or in any adjoining judicial district.⁴⁵

It is uncertain as to the number of budget dispute cases litigated at the superior court level each year, since no central reporting system for such decisions may be found in North Carolina. However, it is safe to assume that budget dispute cases will be appealed from time to time to the Court of Appeals or the State Supreme Court, due to the intense issues involved in public school funding at the local level. While county commissioners must protect the interests of local taxpayers and other county governmental agencies, the board of education must seek to maintain and improve the services of the school system. Thus, the duty of either board is one of a legal nature and moral obligation. However, the General Statutes of North Carolina promulgate certain financial responsibilities that are necessary in maintaining the public school program across the state. It is incumbent upon both boards to see that these statutory requirements are fulfilled.

⁴⁵Kinston City Board of Education v. Board of Commissioners of Lenoir County, 29 N. C. App. 554, 225 S. E. 2d 145 (1976).

FINANCIAL REQUIREMENTS OF THE LOCAL SCHOOL BOARD

The local board of education is required to support the public school program by providing, maintaining, and equipping the physical plants located in the administrative unit, Specific financial requirements of local boards of education may be found in the General Statutes and Public School Laws of North Carolina, as follows:

- Erection of school buildings - § 115C-521
- Provision of equipment for buildings - § 115C-522
- Acquisition of sites - § 115C-517
- Repair of school property - § 115C-524
- Duty to insure property - § 115C-534
- Purchase and maintenance of school buses - § 115C-249
- Office, equipment, and clerical assistance for the superintendent - § 115C-277.

The importance of these areas to the operation of the public schools in North Carolina cannot be overlooked. Thus, local boards of education must, under the General Statutes, provide classroom facilities, suitable furniture, and the necessary instructional supplies for an adequate school system.⁴⁶

School System Needs

The needs of the school system must be presented each year by the local board of education to the tax-levying authority -- the board of commissioners. Upon investigation of these needs, as being necessary, it shall be the duty of

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N. C. Gen. Stat. §§ 115C-521(a), -521 (b), -522 (b), -522 (c).

the county commissioners to provide funds for the needs.⁴⁷ While it is clear both boards have definite areas of responsibility for an adequate school program, at times disagreement between the two boards will arise. The North Carolina Supreme Court addressed the importance of the shared duty of the two boards in 1966.

This dual responsibility obviously requires the utmost cooperation between the two boards and the full assumption of responsibility by each, if the educational needs of the children ...are to be met.⁴⁸

In the event of a property, facility, or other dispute between the two boards, the same procedure for resolving the disagreement as used in budgetary matters under General Statute § 115C-431 will be the legal course of action. Similarly, citizens and taxpayers may from time to time challenge the authority of either board, whereby an injunction to stop the action of either board would be sought through the divisions of the General Court of Justice.

Authority and Control

The Supreme Court of North Carolina has on occasion interpreted where the jurisdiction of one board ends and the authority of the other board begins.

The right of the board of commissioners to determine what expenditures shall be made arise when a

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N. C. Gen. Stat. § 115C-521 (b).

48

Dilday v. Beaufort County Board of Education, 267 N.C. 438, 148 S. E. 2d 513 (1966), at 520.

proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education.⁴⁹

The court had earlier held:

The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education...⁵⁰

Bonds For School Construction and School Site Purposes

The court found in Atkins v. McAden that commissioners may reallocate the proceeds of bonds if conditions so change that such reallocation of funds is necessary to effectuate the purpose of the bonds issue.⁵¹ However, the board of commissioners may not change the purpose for which the bonds are issued, as any change in plans must be initiated by the board of education.⁵²

The building of a school is a matter vested by statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, or unless the committee is influenced by improper motives,

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Parker v. Anson County, 237 N. C. 78, 74 S. E. 2d 338 (1953).

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Atkins v. McAden, 229 N. C. 752, 51 S. E. 2d 484 (1949); School Commissioners of City of Charlotte v. Aldermen, 158 N. C. 191, 73 S. E. 905 (1912).

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229 N. C. 752, 51 S. E. 2d 484 (1949).

52

Parker v. Anson County, 237 N. C. 78, 74 S. E. 2d 338 (1953).

or there is misconduct on their part.⁵³

In regard to school site selection the Supreme Court of North Carolina found:

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless... there has been a manifest abuse of discretion on their part.⁵⁴

However, if local dollars are to be used for the purchase of the school site, the board of county commissioners must first approve the site selection, before the board of education can enter into a contract for construction of a school building on the site in question.⁵⁵ There exists the possibility that approval from county commissioners as to site selection may be required regardless of the source of funds being used.

Considering the total number of local dollars spent each year on public education, the legal financial requirements of the local board of education represent only a modicum of the total sum. Thus, educational disparities result not from the legal financial requirements but from additional or supplemental dollars funded by many of the state's 142 local administrative school units.

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Venable v. School Commissioners, 149 N. C. 120, 62 S. E. 902 (1908); Pickler v. County Board of Education, 149 N. C. 221, 62 S. E. 902 (1908).

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Feezor v. Siceloff, 232 N. C. 563, 61 S. E. 2d 714 (1950).

⁵⁵

Edwards v. Yancey County Bd. of Education, 235 N. C. 345, 70 S. E. 2d 170 (1952).

ALLOWED LOCAL FUNDING PRACTICES

While North Carolina law requires local boards of education to fund certain aspects of the educational program, many local administrative units supersede such requirements many times over. Each year millions of locally raised dollars are used to supplement the minimum state program provided to all local boards of education. These supplemental funds are utilized in a variety of ways, including the hiring of additional teachers, administrators, professional support personnel, and other support personnel; salary supplements; supplies, materials, and textbooks; expanded curriculums and special instructional programs; summer school programs, and staff development programs; building and maintenance needs above state requirements, and other such needs and desires of the local administrative unit.

Local funding for supplemental educational expenditures may come from a variety of sources, but the most common practice is to fund additional items, along with those required by the state, using monies raised through local property taxation. Thus, ad valorem taxation is the source used by counties most often for funding those items found in the current expense budget. However, capital outlay projects such as major construction and equipment expenditures are often funded through the selling of bonds. This form of school district indebtedness is addressed under North Carolina law.

The county board of education, with the approval of the board of commissioners, ... may include in the debt service fund in the school budget all outstanding indebtedness for school purposes ... lawfully incurred in erecting and equipping school buildings necessary for the school term.⁵⁶

Another method commonly used to fund education with local dollars is through tax supplements for educational purposes.

Voted Tax Supplements for School Purposes

Many school systems across the state rely heavily upon supplemental taxes levied in individual school districts or county administrative units. While this form of taxation is by popular vote, some taxpayers have challenged the purposes for such elections.

North Carolina law lists specifically the purposes for which elections may be called in regard to tax supplements for educational purposes. These include voting for a supplemental tax, to increase a supplemental tax, to enlarge city administrative units, to supplement and equalize educational advantages, to abolish a special school tax, to vote on school bonds, to provide a supplemental tax on a countywide basis after a petition for consolidation of school systems within a county, and to consolidate areas or districts from contiguous counties.⁵⁷ Additionally, the law sets a maximum rate and frequency of supplemental tax elections.

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N. C. Gen. Stat. § 115C-473.

57

N. C. Gen. Stat. §§ 115C-501 (a-h).

A tax for supplementing the public school budget shall not exceed fifty cents (50¢) on the one-hundred-dollar (\$100.00) value of property subject to taxation by the local school administrative unit: provided, that in any local school administrative unit, district or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one-hundred-dollars (\$100,00) valuation of said property.⁵⁸

Generally, elections for the purpose of voting on a local tax supplement cannot occur within six months of each other.⁵⁹

In 1968 the North Carolina Supreme Court upheld the constitutionality of the county board of commissioners to levy sufficient taxes in order to provide funds for expenditures in the school system current expense budget, including expenditures for salary supplements.⁶⁰

Taxation suits have been litigated under former statutes with high frequency. An injunction restraining the board of county commissioners from ordering a levy of taxes in a special school district was reversed by the State Supreme Court in 1912.⁶¹ A decision by the same court reversed a lower court decision and declared an election for taxation in a special school district null and void because

58

N. C. Gen. Stat. § 115C-502 (a).

59

N. C. Gen. Stat. § 115C-502 (b).

60

Harris v. Board of Commissioners of Washington County
274 N. C. 343, 163 S. E. 2d 387 (1968).

61

Gill v. Board of Commissioners of Wake County, 160 N. C.
176 (1912).

of a change in district boundary lines.⁶² However, the decision of a lower court that upheld the validity of special local taxation for school districts in Gates County was affirmed by the high court in 1924.⁶³ Action of the same nature was again upheld in a Wilkes County case in 1934.⁶⁴

As the effects of the School Machinery Act began to take shape after 1933, the issues of local taxation appear less noticable. The act placed a much larger burden on the State for the funding of public education. However, some county and city school units have been dissatisfied with the minimum state program and have sought a higher standard for the operation of their schools. The product of such efforts presents large local differentials in per pupil expenditures, not only in different sections of the state, but even when boundary lines are coterminous.

LOCAL PER PUPIL RESOURCES AND EXPENDITURES

Upon examination of the historical and legal aspects of funding education, particularly at the local level, a hint of educational disparities has been made at several intervals. So as to present a more descriptive analysis of how financial

62

Chitty v. Parker, 172 N. C. 126, 90 S. E. 17 (1916).

63

Sparkman v. Board of Commissioners of Gates County, 187 N. C. 241, 121 S. E. 531 (1924).

64

Forester v. Town of North Wilkesboro, 206 N. C. 347, 174 S. E. 112 (1934).

inequity produces such disparities, a quantitative ranking of county per pupil resources and expenditures has been completed as part of the scope for this study. By applying these rankings to a statistical formula it is possible to establish any existing relationship between county wealth, in terms of tax dollars, and expenditures for education.

Data for this segment of the study were collected from various sources throughout the State Department of Public Instruction. The other major source of information was the North Carolina Department of Revenue. The data have been placed in tabular form for clarity purposes, with counties listed in alphabetical order and city school units listed under their respective county. It should be noted that the data pertain to school year 1981-82, which began on July 1, 1981 and ended on June 30, 1982.

While the purpose of this portion of the study is to determine the relationship between local per pupil resources and local per pupil expenditures, other financial data can be readily extracted from the tables for individual administrative school units.

The average daily membership (ADM) of each local educational system (LES) as well as the total county average daily membership (ADM) have been used in order to determine the local per pupil resources and expenditures.

Local revenue resources have been divided by the total county ADM in order to obtain a local per pupil resource

amount listed in dollars. These amounts have been ranked from highest to lowest with 1 representing the highest ranking, and 100 representing the lowest ranking.

Local per pupil expenditures have been listed for both city and county school units. In most cases the amount found in this column for city administrative units represents the county appropriation plus a supplemental tax which is levied in many of these units.

These expenditures have been combined and averaged according to the average daily membership (ADM) and per pupil expenditure of each LES in cases where several school units are located within one county. County expenditures have also been ranked in accordance with the method described in the ranking of county resources. Thus, the two sets of ranks may be identified in the table as R_1 and R_2 .

By applying the per pupil resource rank (R_1) and the per pupil expenditure rank (R_2) to a statistical formula, known as the Spearman rho (rank) correlation coefficient, a relationship or correlation can be established. The formula requires that each rank be subtracted from a corresponding rank and that the differences be squared. Hence, the county per pupil expenditure rank is subtracted from the county per pupil resource rank ($R_1 - R_2$) and the difference is squared (D^2). When the sum of the differences and the sum of cases -- in this study 100 counties -- have been computed and substituted into the Spearman rank formula, the result

is a coefficient of correlation. An explanation of this coefficient of correlation is as follows:

When two variables are highly related in a positive way the correlation between them approaches + 1. When they are highly related in a negative way the correlation approaches - 1. When there is little relation between variables, the correlation will be near zero.⁶⁵

The remainder of this chapter contains the data, collected and tabulated, for the purpose of seeking the correlation between local resources and expenditures. The correlation has been calculated, and may be found immediately following the tabulated data.

65

Donald Ary, Lucy C. Jacobs, and Asghar Razavieh, Introduction to Research in Education, 2nd ed. (New York: Holt, Rinehart, and Winston, 1979), p. 120.

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total ADM/COUNTY	Local Revenue Resources	Local Per Pupil Resources		Local Per Pupil Expenditure		Difference in Rank $R_1 - R_2$ (D)	Difference in Rank Squared (D ²)	
				Amount	Rank (R ₁)	Amount	Rank County (R ₂)			
Alamance	11,392	18,787	\$16,054,206	\$ 854.54	30	\$423.92	\$507.90	20	10	100
Burlington	7,395					637.29				
Alexander	4,993		2,577,382	516.20	96	321.01	321.01	84	12	144
Alleghany	1,784		1,132,021	634.54	82	349.39	349.39	71	11	121
Anson	5,245		3,781,809	721.03	55	303.75	303.75	90	-35	1225
Ashe	4,052		2,527,831	623.85	84	337.26	337.26	78	6	36
Avery	2,996		2,108,160	703.66	61	274.62	274.62	94	-33	1089
Beaufort	4,535	8,440	6,095,941	722.27	54	331.58	369.08	65	-11	121
Washington	3,905					412.64				
Bertie	4,487		2,905,871	647.62	77	230.12	230.12	100	-23	529
Bladen	6,430		4,259,134	662.38	74	348.63	348.63	73	1	1
Brunswick	7,963		11,001,012	1,381.52	4	515.14	515.14	18	-14	196
Buncombe	22,611	27,658	26,877,090	971.77	17	481.61	541.51	12	5	25
Asheville	5,047					809.84				
Burke	12,980		8,581,717	661.15	76	470.82	470.82	29	47	2209

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank $R_1 - R_2$	Difference in Rank Squared
		ADM/COUNTY	Resources	Amount	(R_1)	LES	County (R_2)	(D)	(D^2)
Gabarrus	9,889	17,589	\$12,282,908	\$ 698.33	64	\$404.93	43	21	441
Concord	2,714					502.60			
Kannapolis	4,986					450.83			
Caldwell	13,298		8,508,211	639.81	80	401.82	54	26	676
Camden	1,231		867,943	705.07	60	348.54	74	-14	196
Carteret	6,989		6,145,895	879.37	27	407.54	53	-26	676
Caswell	4,119		2,233,488	542.24	95	263.43	97	- 2	4
Catawba	12,883	20,480	16,600,231	810.56	38	473.10	33	5	25
Hickory	4,621					411.17			
Newton	2,976					447.39			
Chatham	5,972		5,271,201	882.65	25	549.89	10	15	225
Cherokee	3,847		2,201,979	572.39	91	268.56	96	- 5	25
Chowan	2,489		2,190,581	880.10	26	444.28	38	-12	144
Clay	1,211		707,642	584.35	90	295.23	92	- 2	4
Cleveland	9,016	17,252	11,126,419	644.94	78	387.07	32	46	2116

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total ADM/COUNTY	Local Revenue Resources	Local Per Pupil Resources		Local Per Pupil Expenditure			Difference in Rank $R_1 - R_2$ (D)	Difference in Rank Squared (D ²)
				Amount	Rank (R ₁)	Amount	Rank (R ₂)	LES		
Kings Mtn.	4,252		\$	\$			\$527.62	\$		
Shelby	3,984						538.72			
Columbus	8,446	11,246	7,907,640	703.15	62	318.47	315.98	87	-25	625
Whiteville	2,800						308.45			
Craven	12,762		9,096,306	712.76	56	413.38	413.38	49	7	49
Cumberland	34,783	43,405	34,201,021	787.95	42	439.60	498.71	22	20	400
Fayetteville	8,622						737.17			
Currituck	2,076		2,116,556	1,019.54	13	680.50	680.50	8	5	25
Dare	2,136		4,914,965	2,301.01	1	692.75	692.75	6	- 5	25
Davidson	16,190	22,622	14,063,842	621.69	85	308.72	354.73	70	15	225
Lexington	3,653						492.91			
Thomasville	2,779						441.10			
Davie	4,976		3,965,298	796.88	41	399.81	399.81	55	-14	196
Duplin	8,437		5,429,994	643.59	79	329.54	329.54	80	- 1	1
Durham	16,349	24,837	30,315,274	1,220.57	9	721.28	788.55	3	6	36

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total ADM/COUNTY	Local Revenue Resources	Local Per Pupil Resources		Local Per Pupil Expenditure		Difference in Rank $R_1 - R_2$ (D)	Difference in Rank Squared (D ²)	
				Amount	Rank (R ₁)	Amount	Rank (R ₂)			
Durham	8,488		\$	\$		\$918.11	\$			
Edgecombe	5,754	8,939	7,579,980	847.97	32	258.22	320.42	85	-53	2809
Tarboro	3,185						432.80			
Forsyth	40,419		50,045,422	1,238.17	7	735.26	735.26	4	3	9
Franklin	4,551	5,926	3,973,386	670.50	72	388.44	376.00	63	9	81
Franklinton	1,375					334.81				
Gaston	32,929		24,957,547	757.92	45	380.71	380.71	59	-14	196
Gates	1,702		1,171,423	688.26	67	438.58	438.58	41	26	676
Graham	1,536		783,489	510.08	98	356.11	356.11	68	30	900
Granville	6,851		4,811,641	702.33	63	327.31	327.31	81	-18	324
Greene	3,100		2,628,853	848.02	31	492.04	492.04	23	8	64
Guilford	24,382	56,849	49,686,287	874.00	28	603.58	684.71	7	21	441
Greensboro	23,322					791.32				
High Point	9,145					629.14				
Halifax	7,321	11,502	8,114,134	705.45	59	288.19	348.75	72	-13	169

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank	Difference in Rank Squared
		ADM/COUNTY	Resources	Amount	(R ₁)	Amount	(R ₂)	R ₁ - R ₂	(D ²)
Roanoke Rapids	2,634		\$	\$		\$475.04			
Weldon	1,547					420.28			
Harnett	11,673		7,352,896	629.91	83	348.13	75	8	64
Haywood	8,667		7,249,776	836.48	34	482.56	25	9	81
Henderson	8,460	10,142	9,115,239	898.76	23	411.70	31	- 8	64
Hendersonville	1,682					717.69			
Hertford	4,515		3,384,841	749.69	46	317.40	86	-40	1600
Hoke	4,732		2,566,048	542.27	94	259.91	98	- 4	16
Hyde	1,101		1,613,941	1,465.89	3	516.19	17	-14	196
Iredell	10,061	16,206	10,809,804	667.02	73	340.63	50	23	529
Mooreville	2,431					424.33			
Statesville	3,714					600.68			
Jackson	3,911		3,773,866	964.94	18	392.77	56	-38	1444
Johnston	14,525		10,062,935	692.80	66	437.44	42	24	576
Jones	1,799		1,227,792	682.49	68	379.63	60	8	64

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank $R_1 - R_2$	Difference in Rank Squared	
		ADM/COUNTY	Resources	Amount	(R_1)	LES	County	(R_2)	(D)	(D^2)
Lee	7,330		\$ 7,030,052	\$ 959.08	19	\$523.97	\$523.97	14	5	25
Lenoir	6,560	11,491	8,955,910	779.38	43	407.05	444.40	37	6	36
Kinston	4,931					494.08				
Lincoln	8,764		7,330,927	836.49	33	372.63	372.63	64	-31	961
Macon	3,564		2,821,596	819.75	36	417.00	417.00	48	-12	144
Madison	2,917		1,659,387	568.86	92	270.07	270.07	95	- 3	9
Martin	5,652		5,707,577	1,009.83	15	548.87	584.87	9	6	36
McDowell	7,205		4,851,060	673.29	71	304.70	304.70	89	-18	324
Mecklenburg	72,095		111,392,149	1,545.07	2	817.29	817.29	2	0	0
Mitchell	2,537		2,088,765	823.32	35	377.61	377.61	62	-27	729
Montgomery	4,303		2,649,196	615.66	88	355.24	355.24	69	19	361
Moore	8,957		8,793,580	981.76	16	521.82	521.82	15	1	1
Nash	10,771	17,029	9,620,464	564.95	93	409.38	453.39	34	59	3481
Rocky Mount	6,258					523.13				
New Hanover	19,635		23,375,718	1,190.51	10	547.85	547.85	11	- 1	1

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank	Difference in Rank	
		ADM/COUNTY	Resources	Amount	(R ₁)'	LES	County	(R ₂)	(D)	(D ²)
Northampton	4,676		\$ 2,902,099	\$ 620.64	86	\$325.56	\$325.56	83	3	9
Onslow	14,450		10,531,223	728.80	53	357.97	357.97	67	-14	196
Orange	4,972	10,155	12,567,177	1,237.54	8	680.86	837.48	1	7	49
Chapel Hill	5,183					987.73				
Pamlico	2,118		1,607,338	758.89	44	347.37	347.37	76	-32	1024
Pasquotank	5,187		3,868,202	745.75	47	529.58	529.58	13	34	1156
Pender	4,658		3,409,572	731.98	52	382.36	382.36	58	- 6	36
Perquimans	1,661		1,498,699	902.29	22	478.33	478.33	27	- 5	25
Person	5,666		6,342,168	1,119.34	11	431.94	431.94	44	-33	1089
Pitt	11,329	16,182	14,288,628	883.00	24	493.91	508.00	19	5	25
Greenville	4,853					540.90				
Polk	1,733	2,288	1,856,305	811.32	37	374.36	421.03	47	-10	100
Tryon	555					566.75				
Randolph	13,431	17,310	8,929,471	515.86	97	337.48	378.11	61	36	1296
Asheboro	3,879					518.78				

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank $R_1 - R_2$	Difference in Rank Squared	
		ADM/COUNTY	Resources	Amount	(R_1)	LES	County	(R_2)	(D)	(D^2)
Richmond	9,330		\$ 5,955,658	\$ 638.33	81	\$295.30	\$295.30	91	-10	100
Robeson	14,431	24,869	12,389,623	498.20	100	343.59	325.66	82	18	324
Fairmont	2,344					273.03				
Lumberton	4,725					337.47				
Red Springs	1,801					280.69				
Saint Pauls	1,568					255.45				
Rockingham	4,898	16,436	15,113,313	919.53	21	402.57	428.23	46	-25	625
Eden	4,596					444.99				
Madison-Mayodan	2,788					442.10				
Reidsville	4,154					430.62				
Rowan	13,412	15,913	11,846,208	744.43	48	422.93	462.97	30	18	324
Salisbury	2,501					677.69				
Rutherford	10,641		8,575,377	805.88	39	412.44	412.44	51	-12	144
Sampson	7,086	10,037	6,827,710	680.25	69	346.29	411.71	52	17	289
Clinton	2,951					568.81				

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total	Local Revenue	Local Per Pupil Resources	Rank	Local Per Pupil Expenditure	Rank	Difference in Rank	Difference in Rank	
		ADM/COUNTY	Resources	Amount	(R ₁)	LES	County	(R ₂)	R ₁ - R ₂	Squared
								(D)	(D ²)	
Scotland	7,497		\$ 5,319,701	\$ 709.58	57	\$506.51	\$506.51	21	36	1296
Stanly	6,848	8,988	7,185,144	799.42	40	401.37	450.83	36	4	16
Albemarle	2,140					609.12				
Stokes	6,865		6,346,384	924.46	20	476.91	476.91	28	- 8	64
Surry	8,457	11,606	8,512,274	733.44	51	393.88	452.60	35	16	256
Elkin	1,020					747.41				
Mount Airy	2,129					544.63				
Swain	1,609		991,469	616.20	87	487.92	487.92	24	63	3969
Transylvania	4,337		4,727,979	1,090.15	12	520.42	520.42	16	- 4	16
Tyrrell	750		957,533	1,276.71	5	479.84	479.84	26	-21	441
Union	12,246	15,476	10,964,919	708.51	58	364.95	382.40	57	1	1
Monroe	3,230					448.56				
Vance	7,715		5,235,737	678.64	70	344.13	344.13	77	-7	49
Wake	53,239		67,923,250	1,275.82	6	695.47	695.47	5	1	1
Warren	3,252		2,396,332	736.88	50	312.81	312.81	88	-38	1444

LOCAL PER PUPIL EXPENDITURES 1981-82

LES	ADM/LES	Total ADM/COUNTY	Local Revenue Resources	Local Per Pupil Resources		Local Per Pupil Expenditure		Difference in Rank $R_1 - R_2$ (D)	Difference in Rank Squared (D ²)	
				Amount	Rank (R ₁)	Amount	Rank (R ₂)			
Washington	3,164		\$ 2,341,193	\$ 739.95	49	\$362.72	\$362.72	66	-17	289
Watauga	4,697		4,768,596	1,015.24	14	429.88	429.88	45	-31	961
Wayne	13,304	18,425	11,044,617	599.44	89	424.57	441.90	39	50	2500
Goldshoro	5,121					486.91				
Wilkes	11,377		7,888.638	693.38	65	294.74	294.74	93	-28	784
Wilson	12,882		11,039,712	856.99	29	438.82	438.82	40	-11	121
Yadkin	5,349		3,540,391	661.88	75	335.87	335.87	79	-4	16
Yancey	2,850		1,419,913	498.22	99	238.93	238.93	99	0	0

The coefficient of correlation has been found to be +.72 (see below). Thus, there exists a relatively high, positive correlation between local per pupil resources (tax) and local per pupil expenditures.

ρ = the Spearman rho correlation coefficient

ΣD^2 = the sum of the squares of the differences between ranks

N = the number of cases

$$\rho = 1 - \frac{6 \Sigma D^2}{N(N^2 - 1)}$$

$$\rho = 1 - \frac{6(47,356)}{100(10,000 - 1)}$$

$$\rho = 1 - \frac{284,136}{100(9,999)}$$

$$\rho = 1 - \frac{284,136}{999,900}$$

$$\rho = 1 - .28$$

$$\rho = +.72$$

The relevance, possible reasons, and meaning of the computed correlation will be addressed in the final chapter of this study.

CHAPTER IV

ANALYSIS OF MAJOR COURT DECISIONS AFFECTING
PUBLIC SCHOOL FUNDING IN NORTH CAROLINA

The decisions set forth in this chapter represent a historical overview of how North Carolina's highest courts have dealt with the issues surrounding public school finance. Major cases have been selected in order to express a chronological perspective of the courts' decision-making stands regarding such issues as taxation, school bonds, and budget disputes.

The importance of these selected court decisions cannot be over emphasized, as they are indicative of the setting and resetting of precedents governing North Carolina public school funding for more than one hundred years. Thus, the high courts of the state have interpreted North Carolina's Constitution and statutory laws throughout the developmental period of our system of public schools.

CRAVEN COUNTY

Lane v. Stanly

65 N. C. 153 (1871)

Facts

James S. Lane and others brought civil action against the commissioners and tax collector of Craven County seeking

an injunction to stop the levy of certain taxes for school purposes.

The complaint alleged that the school committee of the township made an estimate of the expense necessary to provide for schools to be taught during the year 1870, which estimate was reported to the Board of Trustees of the township, and was thereupon submitted to a vote of the qualified voters of the township, a majority of whom voted against it; that after the election the estimate was forwarded by the trustees of the township to the County Commissioners, who proceeded to levy a tax for the expenses of a school in the township upon the property therein, and placed the tax-lists in the hands of the tax collector, who is one of the defendants, and that he was proceeding to collect it; that in levying the said tax, the Commissioners, who are also defendants, violated the State Constitution in Art. VII, sec. 7, because, first, the levy had not received the vote of a majority of the qualified voters of the township, and secondly, in laying it the equation of taxation was disregarded.¹

The complaint was answered by the defendants who stated:

They had acted in pursuance of the State Constitution and the Act of 1868-69, ch. 165, which was enacted to carry out its provisions; and that the tax in question did not require the vote of a majority of the qualified voters of the township, nor the equation of taxation, because it was a necessary expense.²

A temporary injunction which had been granted was removed and the plaintiffs appealed.

Decision

The North Carolina Supreme Court in reaching its decision recognized the constitutional importance of education

¹ Lane v. Stanly, 65 N. C. 153 (1871).

² Ibid., at 154.

to good government. The Court also cited the duty of the General Assembly to provide by taxation and otherwise for a general and uniform system of public schools.

It will be observed that it is to be a "system;" it is to be "general," and it is to be "uniform." It is not to be subject to the caprice of localities, but every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulations.³

The Court reasoned that such uniformity would be lost if every township were allowed to develop its own regulations and thus, the State must govern the education of its citizens.

The State Supreme Court concluded:

Townships have not the power of taxation for school purposes, either through their trustees or committees. Nor has a county the power to lay township taxes, as distinguished from the general county tax for school purposes. And in laying the county tax for school purposes, the equation of taxation must be observed.⁴

Discussion

It is clear that the Lane v. Stanly decision marked a significant victory for tax haters and enemies of the schools. Thus, the State's highest court ruled that schools were a necessary expense for the county as a whole, but not a necessary expense for townships having designated school districts within the county.

School support was intended to be a shared responsibility of the State, the county, and the township as set forth by

³
Ibid., at 156.

⁴
Ibid., at 157.

the framers of the State's Constitution and the authors of the special school legislation passed in 1868-69. The idea that anyone would question whether or not schools were a necessary expense was not a serious consideration until this Craven County case appeared.

Thus, in the name of "uniformity," the general statutes provided that county commissioners of any county could not levy taxes to maintain the minimum school term without a vote of the people. This, of course, was contrary to the Constitution which declared the commissioners would be indicted if they failed to provide the necessary funds to maintain the minimum school term of four months in every district.

SAMPSON COUNTY

S. Barksdale et al. v. Commissioners of Sampson County

93 N. C. 473 (1885)

Facts

The General Assembly of 1885 cited the minimum four months school term as a duty to be maintained through special taxation by county commissioners of each county, without a vote of the people, provided that State support proved to be insufficient for the operation for the minimum school term.

Shortly after the 1885 General Assembly adjournment, the commissioners of Sampson County proceeded to levy enough special county tax to provide for the minimum school term in every district of the county. However, when commissioners

sought to collect the levied tax, S. Barksdale and other citizens brought action to enjoin the collection.

The Sampson County Superior Court ruled in favor of Barksdale and other citizens, thereby enjoining the collection of the special tax for the schools. The defendant commissioners appealed to the State's highest court.⁵

Decision

The Supreme Court of North Carolina upheld the lower court decision in the Barksdale Case by continuing the tax collection enjoinder. Chief Justice, W. N. H. Smith issued the opinion of the court which declared:

1. That it was the duty of the county commissioners under Article IX of the Constitution to levy a tax sufficient to conduct the schools for four months in each year, but that in doing so the commissioners must not exceed the limitation of taxation imposed by section 1 of Article V of the Constitution.

2. That so much of Chapter 174, Laws of 1885, as permitted the commissioners to disregard the tax limitation of section 1 of Article V of the Constitution in order to maintain public schools for four months in every year was unconstitutional and void.

3. That the General Assembly could not authorize a special county tax to maintain schools for four months under the provisions of section 6 of Article V of the Constitution, on the ground that the special tax was a tax for a special purpose.

4. That when the Constitution imposed on the county commissioners the duty to maintain schools for four months and did not provide the entire means to execute that duty, then the commissioners were absolved from indictment when they employed all the means at their command, subject to the tax limitation of section 1 of Article V of the Constitution.⁶

5

Barksdale v. Commissioners, 93 N. C. 473 (1885).

6

Charles L. Coon, School Support and Our North Carolina Courts (Raleigh, North Carolina: Edwards and Broughton Company, 1926), pp. 13-14.

However, the decision was not one of unanimity as Justice A. S. Merrimon filed a dissenting opinion expressing another interpretation as to the meaning of the North Carolina Constitution. He stated:

1. That power of the General Assembly to require the levying of adequate taxes for the support of at least a four months school in every year was unaffected by the limitation upon the general power of taxation set forth in section 1 of Article V of the Constitution; that the General Assembly might authorize the disregard of that limitation of taxation to the extent necessary to carry out one of the leading and most important purposes of the Constitution, namely, the maintenance of the public schools for at least four months in every year. Hence, there could be no limitation of taxation which operated to prevent the commissioners of any county from maintaining the minimum school term.

2. That the General Assembly may, "in the exercise of its almost unlimited power over counties, create this county purpose and impose such burden just as it may require the several counties to construct and keep in repair courthouses, roads, bridges and the like things. The legislative power in the one case is as broad and plenary as in the other. I know not where any distinction in this respect is to be found. If the Legislature may impose such burden, then it becomes a part of the necessary expenses of each county, and such tax as that in question is not forbidden by the Constitution, Article VII, section 7, which prohibits a county tax to be levied except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters."⁷

Discussion

In essence, the effect of the Supreme Court majority opinion in Barksdale was one which allowed the public schools of North Carolina to operate for a period of much less than four months in each year. However, the dissenting

7

Ibid., p. 15.

opinion of Justice A. S. Merrimon later became, at least partially, the majority opinion almost twenty-two years to the day after the Barksdale decision.

FRANKLIN COUNTY

J. R. Collie v. Commissioners of Franklin County

145 N. C. 170 (1907)

Facts

J. R. Collie and other taxpayers of Franklin County brought civil action against the Board of Commissioners to prohibit the collection of a one-cent tax on \$100 worth of property and three cents on each taxable poll for the support and maintenance of public schools in Franklin County.⁸ The tax in question was in addition to the tax limit levied for general State and county purposes.

A temporary restraining order was issued, and upon hearing, the order was dissolved by Justice C. M. Cooke of the Franklin Superior Court. The plaintiff appealed to the Supreme Court of North Carolina.

Decision

The State Supreme Court upheld the lower court decision, thereby reversing the long-standing prohibitions of the Barksdale decision. Justice George H. Brown wrote the opinion of

⁸
J. R. Collie v. Commissioners of Franklin County,
145 N. C. 170 (1907).

the Court which included the following vital elements:

1. We hold with Mr. Justice Merrimon in the Barksdale case, that while this limitation upon the taxing power of the General Assembly prevails generally, it does not always prevail, and that it should not be allowed to prevent the giving effect to another article of the same instrument equally peremptory and important. We must not interpret the Constitution literally, but rather construe it as a whole; and we should, if possible, give effect to each part of it. The whole is to be examined with a view to ascertaining the true intention of each part, and to giving effect to the whole instrument and to the intention of the people who adopted it.

2. While the General Assembly must regard such limitation upon its power to tax, as defined in many decisions of this court, when providing for the carrying out of objects of its own creation and the ordinary and current expenses of the State government, yet when it comes to providing those expenses especially directed by the Constitution itself, we do not think the limitation was intended to apply.

3. Instead of prescribing the rate to be levied for the purpose of a four months school, the General Assembly properly and wisely left the amount to be levied to be determined by the county authorities of each county. In some counties it may not be necessary to levy any tax, while in others some tax, differing in amount, will have to be levied and collected in order to carry out the directions of the law. In levying the tax the board of commissioners must observe the equation between property and poll fixed in the Constitution. In estimating the tax necessary beyond the limit of $66 \frac{2}{3}$ cents on property and \$2 on the poll to give a four months term, no longer period may be considered. When the four months requirement is fulfilled, the limit of taxation fixed in Article V necessarily takes effect, and anything beyond that would be void.⁹

Discussion

Without question the Collie decision was a significant win in the struggle to gain local financial support for public education in North Carolina, although the opinion was not

9

Ibid., at 173-176.

a total victory. The North Carolina Supreme Court stopped short of allowing special taxation, without a vote of the people, for a school term longer than four months.

Thus, the funding of public education in the schools of North Carolina for a period longer than four months did not change until 1918. At that time the minimum school term was lengthened to six months.

CHEROKEE COUNTY

Board of Education v. Board of Commissioners

150 N. C. 116 (1909)

Facts

The Board of Education of Cherokee County submitted to the Board of County Commissioners an estimate of the amount of monies needed to operate the public schools for the required four-month period. Included in the estimate was the amount needed in additional tax dollars for the said purpose. However, the Board of Commissioners refused to comply with the request for an additional tax levy, thereby stating:

The funds which will be derived from the school tax already levied in said county will be, if properly and economically expended, amply sufficient to keep open the schools in every school district in said county for the period required by law...¹⁰

The Board of Education filed action seeking a writ of

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Board of Education v. Board of Commissioners, 150 N. C. 116 (1909).

mandamus from the Superior Court of Cherokee County. Upon hearing, the complaint was dismissed and an appeal was taken by plaintiff to the State Supreme Court.

Decision

In reaching its decision Justice Hoke of the North Carolina Supreme Court cited the duty of county commissioners toward education under the State Constitution.

That each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least four months in every year, and if the commissioners of any county shall fail to comply with the aforesaid requirement of this section they shall be liable to indictment.¹¹

The question raised by way of appeal, "is whether the duty referred to can be enforced by writ of mandamus."¹² This question was answered by the Court.

It is recognized doctrine that the writ of mandamus is the appropriate remedy to enforce the performance of duty on the part of county officials, when the duty in question is both peremptory and explicit, but that such a writ will not be granted to compel the performance of an act "involving the exercise of judgment and discretion on the part of the office to whom its performance is committed."¹³

The opinion further stated:

The question presented, the amount of taxes to be levied to maintain the public schools of Cherokee County for the minimum period of four months, is one which clearly involves the exercise of judgment and

¹¹

N. C. Const. art. IX, § 3.

¹²

Board of Education v. Board of Commissioners, 150 N. C. 116 (1909).

¹³

Ibid., at 121.

discretion, which our Constitution and statute law have thus far referred to the board of commissioners of the several counties, and the courts cannot and should not undertake to control their decision.¹⁴

While the majority opinion upheld the lower court decision, that the amount of funding rests with the board of county commissioners, Chief Justice Clark filed a highly memorable dissenting opinion. In essence the dissent identified public education as a State function, rather than a county concern, which allowed no discretion on the part of county commissioners. Chief Justice Clark further explained how education differed from other duties required of county commissioners.

Indictment of the commissioners will give the child, whose life is passing, no compensation for its irreparable loss. Neither would the election of new commissioners a year or two later. Besides, there may be counties in which the popular majority would be unfavorable to a levy of taxation adequate for four months' schooling. A bridge or a defective courthouse can wait. The child's education cannot. With him, "Dies fluunt et vita irreparabilis." "The days flow by, and the years that can never be recalled."¹⁵

Discussion

Although this Cherokee County case carried with it taxation overtones of former years, chiefly, it represents another highly important factor in the development of financial support for public education in North Carolina-- budget disputes. While other major Supreme Court decisions had

14
Ibid., at 123.

15
Ibid., at 127.

dealt with the support of schools, those cases had been filed by taxpayers, not the board of education, against county commissioners.

Although the majority opinion in this Cherokee County case upheld the right of county commissioners to decide the amount of money schools were to receive in order to operate the required minimum school term, the dissenting opinion filed by Chief Justice Clark had a considerable impact on the legal procedures available to board of education, Hence, the Legislature of 1909, then in session, passed an act giving the county boards of education the right to sue out of mandamus in budget dispute cases.

GRANVILLE COUNTY

Board of Education v. Board of County Commissioners of Granville County.

174 N. C. 469 (1917)

Facts

The Board of Education of Granville County submitted its budget to the Board of Commissioners asking for a special county tax levy of 10 cents on each \$100 valuation above the 66 $\frac{2}{3}$ cents limitation. The commissioners of Granville County were of the opinion that 5 cents on the \$100 valuation would be a sufficient levy in to operate the public schools for the required four months school term.¹⁶

¹⁶Board of Education v. Board of County Commissioners of Granville County, 174 N. C. 469 (1917).

The Granville County Board of Education filed civil suit action in Granville Superior Court seeking a writ of mandamus in order to compel the defendant board of commissioners to fund the tax levy asked for. Judgment was ruled in favor of the defendants and the plaintiffs excepted and appealed.

Decision

Judge G. W. Connor of the Superior Court of Granville County had reasoned that the 5 cent levy by the defendant board of commissioners would be sufficient for the operation of the schools, if an item of \$1,250 for the maintenance of four high schools were eliminated from the budget. In the opinion of Judge Connor these schools were no part of the public school system.

Justice Hoke delivered the opinion of the Supreme Court of North Carolina.

In *Collie v. Commissioners*, 145 N. C., 170, we have held that these requirements of the Constitution as to our public-school system are imperative, and that the restrictions established by Article V as to the amount of tax levies for ordinary State and county purposes do not apply to taxation required to maintain these four-months public schools. We find nothing in this article of our Constitution, or elsewhere, which in terms restricts the public schools of the State to the elementary grades, or which established any fixed and universal standard as to form, equipment, or curriculum. On the contrary, in view of the prominent placing of the subject in our organic law, the large powers of regulation and control conferred upon our State board, extending at times even to legislation on the subject, the inclusive nature of the terms employed, "to all the children of the State, between the ages of 6 and 21 years of age," together with the steadfast adherence to this patriotic, beneficent purpose, throughout our entire history, it is manifest that these constitutional provisions were intended to

establish a system of public education adequate to the needs of a great and progressive people, affording school facilities of recognized and ever-increasing merit to all the children of the State, and to the full extent that our means could afford and intelligent direction accomplish.¹⁷

Discussion

Ironically, this Granville County case, which initially started as a budget dispute, ended by the Supreme Court declaring high schools as a vital part of the North Carolina system of public schools. Thus, this Granville County decision, by the State's highest court, provided the impetus needed for the rapid development of public high schools across North Carolina.

ALAMANCE COUNTY

Board of Education of Alamance County v. Board of Commissioners of Alamance County

178 N. C. 305 (1919)

Facts

Under the provisions of Chapter 102, Public Laws of 1919, the Alamance County Board of Education filed with the Board of Commissioners the school budget for the 1919-20 school year. The budget request showed a tax rate of 40 cents for the salary fund and a rate of 10 cents for the building and incidental fund, the rate was based on each \$100 worth of assessed property value. After receiving the school board's

¹⁷ Ibid., at 472.

budget request, the commissioners of Alamance County voted to levy a total of 35 cents on \$100 worth of property for special school taxes. The commissioners made no distinction between the salary fund and the building fund.¹⁸

A mandamus proceeding was initiated by the Board of Education against the Board of Commissioners of Alamance County. The Superior Court found that an additional levy of 5 cents would be necessary in order that the building and incidental expense fund be sufficient to maintain a six months school term for the school year 1919-20.¹⁹

The defendant Board of Commissioners took exception to the Superior Court judgment and appealed to the State's highest court.

Decision

Justice Walker delivered the opinion of the North Carolina Supreme Court citing the contentions of the appellant's brief:

The only real question in this case is whether the levying of additional taxes to take care of the incidental expense fund and the building fund shown in the budget prepared by the county board of education is vested in the discretion of the county commissioners.²⁰

In reference to discretionary power of the board of

18

Board of Education of Alamance County v. Board of Commissioners of Alamance County, 178 N. C. 305 (1919).

19

Ibid., at 307.

20

Ibid., at 312.

county commissioners, Justice Walker stated for the court: "But we do not see that any discretion exists..."²¹ Thus, the lower court opinion requiring a levy of an additional 5 cents tax for school buildings was upheld by the State Supreme court.

Discussion

This Alamance County case, as decided by the North Carolina Supreme Court, clearly indicated that school buildings must be considered as part of the necessary expense of maintaining the Constitutional minimum school term of six months. Thus, commissioners of each county could fund the building and maintenance of schools, by taxation, without a vote of the people. However, the General Assembly did limit the counties by statute to the amount of taxation the county commissioners were authorized to levy for building and incidental purposes in any one year to twenty-five per cent of the salary fund provided for teachers.²²

ROCKINGHAM COUNTY

J. Walter Lovelace et als. v. T. R. Pratt et also.,
Commissioners of Rockingham County

187 N. C. 686 (1924)

Facts

Acting under the Consolidated Public School Law of 1923,

21

Ibid., at 314.

22

Ibid., at 308.

Chapter 136, Laws 1923, article 23, the Rockingham County Board of Commissioners proceeded to issue serial bonds in the amount of \$49,000 for the construction of two school-houses. Action to enjoin the selling of the bonds was brought to the Superior Court of Rockingham County by citizens and taxpayers of that county. Judgment was entered in favor of the defendant board of commissioners and the plaintiffs excepted and appealed.²³

Decision

The Supreme Court of North Carolina affirmed the opinion of the lower court and upheld the validity of the bond issuance. Justice Hoke issued the opinion of the high court, which included the following:

The Consolidated Public School Law (chapter 136, Laws 1923, article 23) provides, in effect, that when the outstanding indebtedness created prior to the year of 1923 for the necessary expense of conducting a six-months school in the respective counties, shall exceed the sum of \$10,000, the boards of county commissioners are authorized, empowered and directed to fund the same by issuing the serial notes of the county, or serial bonds thereof, for the amount of such indebtedness, and to levy annually a special ad valorem tax on all the tangible property of the county sufficient to pay said obligations, principal and interest as they mature, and that such tax shall be in addition to all other taxes authorized by law to be levied in said county. And, further, that when the note or notes of a county have been issued for funds borrowed to erect school buildings at the request of the board of education, and required to provide for the necessary school buildings

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J. Walter Lovelace et als. v. T. R. Pratt et als.,
Commissioners of Rockingham County, 187 N.C. 686 (1924).

to maintain a six-months school, the said notes are in all respects validated and may be funded as authorized and directed by this article.²⁴

Discussion

The State's highest court declared, in this Rockingham County case, that counties may contract a debt to the State for money to erect school buildings by selling bonds for the payment of the debt without a favorable vote of the people. Thus, this decision represents yet another milestone in the progression of public education in the "Old North State."

BUNCOMBE COUNTY

M. B. Reeves et al. v. Board of Education of Buncombe County et al.

204 N. C. 74 (1933)

Facts

A prayer for a permanent injunction sought by the plaintiff in order to restrain the board of county commissioners of Buncombe County from assuming a bonded debt for school buildings, and the levying of a tax to pay the principal and interest of the bonds was denied by the Superior Court of Buncombe County.²⁵ The plaintiffs took exception and assigned error to the court's judgment and appealed to the Supreme Court of North Carolina.

²⁴

Ibid., at 688.

²⁵

M. B. Reeves et al. v. Board of Education of Buncombe County et al., 204 N. C. 74 (1933).

Decision

In reviewing the plaintiff's appeal, Justice Clarkson of the Supreme Court cited three questions to be answered by the Court.

1. Can the county of Buncombe assume the payment of bonds issued in special school districts as a county-wide obligation, instead of levying a tax upon the district where the bonds were voted?

2. Can the county of Buncombe assume the payment of bonds issued by the city of Asheville when the same was a special charter school district but has since become a part of the general county schools of Buncombe County under the control of the board of education of said county?

3. Chapter 180 of the Public Laws of 1925 being an act to raise revenue and not having been passed as a roll-call bill, was the same cured by the amendment thereto in chapter 239 of the Public Laws of 1927.²⁶

After careful study of the above questions, the Supreme Court answered all of them in the affirmative by holding:

The maintenance and construction of school buildings for the six months public school term being prescribed by the Constitution, the county commissioners could have been compelled to have provided the school buildings in Buncombe County as a county-wide charge, and could have been compelled to have provided the money therefor by the issuance of county-wide bonds, therefore, it would follow that if the various buildings in the various school districts are a county charge, it is proper for the county to assume this obligation which has heretofore been attempted by the districts. There is no sound reason why a school district should have to pay out of its own taxable property a debt which the Constitution and laws of the State impose upon the county. The authority for the assumption by the county of the bonded debt of the various school districts is contained in sec. 6, chap. 180, Public Laws, 1925, as amended by chapter 239, secs. 4 and 5, Public Laws, 1927 (Michie's Code, 1931, sec. 5599), the last paragraph of which reads as follows: "The county board of education with the approval

26

Ibid., at 76.

of the board of commissioners may include in the debt service fund in the budget the indebtedness of all districts, including special charter districts, lawfully incurred in erecting and equipping school buildings necessary for the six months school term, and when such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, then the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of this fund among the schools of the county as provided in this section."²⁷

Discussion

As the development of the North Carolina system of public schools began to strengthen, through consolidation, during the early decades of the twentieth century, this Buncombe County case gave clear interpretation to the legal aspects of funding bonded indebtedness of local school districts after merger. Thus, such indebtedness was ruled by the State's highest court as a county-wide charge.

ONslow COUNTY

Board of Education of Onslow County v. The Board of County Commissioners of Onslow County

240 N. C. 118 (1954)

Facts

Having prepared and submitted the current expense and capital outlay budgets for the 1953-54 school year to the commissioners of Onslow County, the board of education, being dissatisfied with the elimination and reduction of budget

²⁷

Ibid., at 77.

items by the commissioners, sought litigious proceedings governing budget disputes under G. S. 115-160.

The findings of both the Clerk of Superior Court and Justice Stevens of the Superior Court of Onslow County were appealed by the school board. Exception was taken by the Onslow County Board of Education to each finding of fact not in accord with the prepared budget, noting that each eliminated or reduced item was necessary for the maintenance of the Onslow County Schools.²⁸

Decision

Justice Bobbitt writing the opinion of the North Carolina Supreme Court stated:

Having invoked the jurisdiction of the Superior Court by exceptions to and appeal from the decision of the arbitrator, which in turn is the basis of the jurisdiction of this Court upon appeal, the Board of Education cannot be heard now to challenge the findings and judgment of the court below on the ground that there was no bona fide disagreement between the two Boards or on the ground that the County Commissioners arbitrarily reduced the budgets prepared and presented by it. Upon appeal, this Court is limited to a consideration of assigned errors of law in the proceedings in the Superior Court ... By the express terms of the statute, the findings of the Superior Court judge are conclusive. Hence, the findings of the court below must stand, the record failing to disclose that these findings were made arbitrarily or in abuse of statutory duty.

The Board of Education's budget for Current Expenses called for a total of \$128,500.00 as compared with the findings of fact by the court below of \$112,400.00, a difference of \$16,100.00. The Board

of Education's budget for Capital Outlay called for a total of \$62,000.00 as compared with the findings of fact by the court below of \$47,000.00, a difference of \$15,000.00.²⁹

The court further explained:

We appreciate the desire of the County Superintendent and of the Board of Education to provide for the operation of the schools of the county according to standards higher than is possible by the use of State funds alone for current expenses in the conduct of the school program. If the qualified voters share this desire, the procedure is provided whereby supplemental funds may be authorized for such purpose and provided through county ad valorem taxation. G. S. 115-361, G. S. 115-363.

The judgment of the court below requires that the County Commissioners levy a tax for the school year 1953-54 sufficient to provide a Current Expense fund in the amount of \$112,400.00 and a Capital Outlay fund in the amount of \$47,000.00. In view of what has been stated above, it would seem that the failure of the court below to add, "less such part of these amounts as is available for Maintenance of Plant and Fixed Charges in the county school fund, derived from fines, forfeitures and other sources, specified in G. S. 115-356," resulted in a judgment more favorable to the Board of Education than that to which it was entitled. In any event, no error of law prejudicial to the Board of Education has been made to appear. Therefore, the judgment of the court below will be Affirmed.³⁰

Discussion

In the opinion of the State's highest court, higher educational standards attainable by supplementing local dollars to the State funds, must be a desire of the qualified voters within the county or each school district.

Thus, a conclusion that one might draw from this Onslow

29

Ibid., at 121.

30

Ibid., at 127.

County decision is that if educational disparities exist, due to the level of local funding, among school units across the State, then these disparities are well within the legal sanctions of North Carolina law.

FRANKLIN COUNTY

C. S. Strickland v. Franklin County

248 N. C. 668, 104 S. E. 2d 852 (1958)

Facts

C. S. Strickland and other taxpayers brought suit to enjoin the issuance of school building bonds by the Franklin County Commissioners. The plaintiffs contended that even though the bonds were to be issued under a special act of 1957 allowing bonded indebtedness for school districts within a county, the bonds were actually debts of the county. Further, the bonds were not submitted as a matter of vote to the people of the entire county and therefore, the issuance of such bonds would be unconstitutional.³¹

Herman R. Clark, Justice, of the Superior Court of Franklin County entered judgment dissolving a temporary order of injunction and dismissed the suit. The plaintiff taxpayers appealed the decision to the Supreme Court of North Carolina.

Decision

The State Supreme Court upheld the lower court opinion,

31

C.S. Strickland v. Franklin County, 248 N. C. 668, 104 S. E. 2d 852 (1958).

holding the right of school district indebtedness to be lawful and constitutional. Justice Johnson delivered the opinion of the high court.

Accordingly, the statute of 1957 under which the instant bonds are to be issued is not unconstitutional or invalid per se. Nor is it unconstitutional or invalid in respect to its application to the particular facts of this case. The bonds when issued will be debts only of the special tax district, payable, as provided in the act, "exclusively out of taxes to be levied" in the district. The bonds will not be debts of Franklin County and may not be paid in any part out of county funds, unless and until payment be assumed by the county under the procedure outlined in G. S. § 115-109, and in conformity with applicable constitutional limitations.

We conclude that when the provision which directs that the board of county commissioners "may pay" the bonds from county funds is considered in pari materia with the prior general act of 1955, which establishes a statewide policy with reference to assumption of school district indebtedness by counties, it must be treated as intended to fit into and be governed by the provisions of the earlier general statute. And when this provision is so considered in pari materia with the general statute, it may be given operative effect entirely within the purview of the general act and in complete harmony with the rest of the special act.³²

Discussion

This Franklin County case, as decided by the North Carolina Supreme Court, made clear the law governing school district bond indebtedness. Thus, commissioners of each county could authorize the selling of bonds and levy taxes in special bond tax districts, in accordance with the election of such bonds for school purposes as voted on by people of the district.

32

Ibid., at 857.

While a fundamental, constitutional, and statutory right of counties, communities, and school districts to supplement basic State educational programs is clearly in existence, this right may be to the detriment of those children residing in poorer counties and school districts. Thus, if the State provides no equalizing scheme for counties of lesser wealth, the inevitable effect will be inequalities among the schools of North Carolina.

COLUMBUS COUNTY

Whiteville City Administrative Unit v. Columbus
County Board of County Commissioners

251 N. C. 826, 112 S. E. 2d 539 (1960)

Facts

After reviewing the annual budget request submitted by the Whiteville City School Board, the Columbus County Board of Commissioners voted to fund the budget in its entirety with the exception of a \$44,000 item found in the capital outlay portion of the budget. Being dissatisfied with the commissioners' decision, the Whiteville School Board requested a joint meeting of the two boards, but no solution could be reconciled. The budget dispute was then submitted to the clerk of Superior Court as provided by G. S. 115-87. The clerk ruled in favor of the school board and defendant commissioners made appeal to the Superior Court of Columbus County. The Court held in favor of the defendants, ruling

that the budget item, funds for a new school site, was not necessary to maintain the schools of the Whiteville Administrative District.³³ The school board excepted and appealed to the State's highest court.

Decision

The North Carolina Supreme Court upheld the lower court opinion, agreeing that the budget item was not reasonably necessary in the maintenance of the Whiteville City Schools. However, the right to select school sites by the appellant Board of Education was also upheld, provided funds were available to pay for such sites.³⁴ The Court concluded:

There has been no adjudication here which prohibits the school authorities from acquiring the site they desire. What has been determined is that it cannot be acquired with taxes levied on the people of Columbus County. Appellant may acquire it as a gift or with funds coming from sources other than taxes levied by the Commissioners of Columbus County.³⁵

Discussion

This Columbus County case, once again, reiterated the discretionary power of local boards of county commissioners to determine the necessary expenses, above the State requirements, for the operation of public schools in North

33

Whiteville City Administrative Unit v. Columbus County Board of County Commissioners, 251 N. C. 826, 112 S. E. 2d 539 (1960).

34

Ibid.

35

Ibid.

Carolina. However, Justice Rodman stated in his opinion the important duty of both the board of education and the board of county commissioners in regard to the budget process.

The basic philosophy with respect to the operation of our school system remains. It is the duty of the board of education to evaluate their needs, apply to the board of county commissioners for funds to supply the needs, and when funds are appropriated, to spend the same within the designated classification, current expenses and capital outlay, as will best serve school needs. It is the duty of county commissioners to study the request for funds filed with them by the board of education and to provide by taxation such funds, and only such funds, as may³⁶ be needed for economical administration of schools.

WASHINGTON COUNTY

Harris v. Board of Commissioners of Washington County

274 N. C. 343, 163 S. E. 2d 387 (1968)

Facts

Action was filed by citizens and taxpayers of Washington County against the Board of County Commissioners, to restrain the levy and collection of a tax increase for the purpose of supplementing the current expense budget for the county schools. In their contention the plaintiffs charged that the additional tax levy would be used to supplement teachers' salaries, and that a tax for this purpose

36

Ibid., at 542.

had not been approved by the electorate of Washington County.³⁷

In the finding of facts, the Superior Court of Washington County determined that the 1967-1968 current expense budget to supplement teachers' salaries was to be paid from funds derived from fines, penalties, and forfeitures, and from Alcoholic Beverage Control funds.³⁸ Judge Peel of the Superior Court entered an order denying the plaintiff's application for a temporary restraining order. However, the plaintiffs took exception to the decision and appealed.

Decision

Justice Bobbitt, in writing the opinion of the Supreme Court of North Carolina, stated:

Whether, under our present system, the board of commissioners of a county should be authorized, where necessity is shown by a county board of education, or peculiar local conditions demand, to add or supplement items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, and to make a sufficient tax levy to provide the funds therefor, either with or without the approval of the voters of the county, is a matter for determination by the General Assembly. The General Assembly, by its enactment of Chapter 1263 of the Session Laws of 1967, has conferred such authority on the board of Commissioners of Washington County, without a vote of the people. In exercising the authority conferred, Washington County, through its Board of Education and its Board of Commissioners, acted in its capacity as an integral part of the State

37

Harris v. Board of Commissioners of Washington County, 274 N. C. 343, 163 S. E. 2d 387 (1968).

38

Ibid., at 389.

school system and as an administrative agency of the State.³⁹

Thus, the State's highest court upheld the lower court's opinion, thereby allowing a tax increase to supplement the current expense budget of the public schools.

Discussion

This decision by the State Supreme Court reaffirmed the right of county commissioners, acting under the authority of the General Assembly, to provide adequately for school needs throughout the State. Thus, financial support of public schools by county commissioners, without a vote of the people, falls clearly in compliance with the mandate of Article IX, section 2, of North Carolina's Constitution.

WILSON COUNTY

Wilson County Board of Education v. Wilson County Board of Commissioners

26 N. C. App. 114, 215 S. E. 2d 412 (1975)

Facts

On July 1, 1974 the Wilson County Board of Commissioners adopted its budget for the 1974-75 fiscal year. The budget included a sum of \$806,542 for the Wilson County Schools current expense fund as requested by the Wilson County Board of Education. However, the commissioners in adopting the

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Ibid., at 396.

budget, reduced a line item in the budget for the Superintendent's salary supplement by \$1,734, thereby asking the board of education to indicate to which line item the additional sum should be applied.

A joint meeting was held between the two boards in an attempt to resolve the disputed budgetary line item, from which a tie vote resulted. The matter was referred to the clerk of Superior Court and a ruling in favor of the board of commissioners was found. The clerk's decision was appealed to the Superior Court of Wilson County and judgment was entered in favor of the board of education. The defendant board of commissioners appealed to the North Carolina Court of Appeals.⁴⁰

Decision

After reviewing this Wilson County case, Justice Clark of the Court of Appeals of North Carolina wrote a lengthy opinion which included the following:

We think it abundantly clear from the statutory provisions and their history and from the interpretation placed thereon by the Supreme Court that the county commissioners have the right, indeed the duty, to consider the budget requests submitted by the board of education on a line by line basis. Certainly there can be no doubt but that this must be done where the requests of the board of education, if granted, would require an additional tax levy. We think the statutes clearly imply this as a requirement even where no additional tax levy is necessary. G. S. § 115-80 clearly provides that where the board of education is able to

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Wilson County Board of Education v. Wilson County Board of Commissioners, N. C. App. 114, 215 S. E. 2d 412 (1975).

maintain the school plants for an amount less than that which has been placed to the credit of the school fund by law, the board may, in its discretion, use the excess to supplement any item of expense in its current expense fund, but only with approval of the county commissioners.⁴¹

Justice Clark further stated:

The board of commissioners are the representatives of the taxpayers in levying the tax, collecting the revenue therefrom, and spending it--all in the manner which will best suit the needs and interests of all the taxpayers. One of their duties is to provide the funds necessary to operate the public schools for nine months, but only such funds as are needed for the economical administration of the schools. They can only fulfill their duty to the taxpayers by considering closely all budgets presented to them as requests for funds. The statute requires the itemization of the budget requests and we think the General Assembly intended that each item be considered by the county commissioners, regardless of whether additional tax levy is necessary.⁴²

The Court of Appeals remanded the case to the trial court for proceedings not to be inconsistent with the high court's opinion.

Discussion

While the Court of Appeals upheld the right of county commissioners to review the school system's budget on a line by line basis, the case was remanded to the Superior Court of Wilson County. The remand was ordered by the high court because the trial court judge had failed to include whether or not the line item in question was necessary for the

⁴¹ Ibid., at 422.

⁴² Ibid., at 422-423.

maintenance of the schools, but instead had determined the amount requested by the Wilson County Board of Education was not unreasonable.

LENOIR COUNTY

Kinston City Board of Education V. Board
of Commissioners of Lenoir County

29 N. C. App. 554, 225 S. E. 2d 145 (1976)

Facts

When the Lenoir County Commissioners received the Kinston City Schools budget for fiscal year 1975-76, they deleted \$400,000 in capital outlay funds from the requested amount. From this, the Kinston City Board of Education sought litigation to restore the stated sum to the capital outlay budget. The clerk of Superior Court, acting as arbitrator, ruled in favor of the defendant commissioners, and the plaintiff school board appealed.⁴³

The defendant board of commissioners requested a jury trial by the Superior Court and the plaintiff moved to have the jurors summoned from another county because of the controversial nature of the case. The move was so ordered, as "Judge Albert Cowper concluded that it would be difficult

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Kinston City Board of Education v. Board of Commissioners of Lenoir County, 29 N. C. App 554, 225 S. E. 2d 145 (1976).

to obtain an impartial trial by a Lenoir County jury."⁴⁴

Judgment was entered in favor of the Kinston City Board of Education and the Lenoir County Commissioners appealed, assigning error.

Decision

The North Carolina Court of Appeals reviewed the appellant's assignment of error.

The question now before this Court on appeal is whether or not citizens and residents of another county than the county whose tax funds are at issue may render a decision which results in the tax levying authorities being ordered to allocate and appropriate tax funds to support the educational institutions in the county.⁴⁵

Justice Vaughn, in delivering the opinion of the Court of Appeals, upheld the trial judge's decision to summon jurors from another county. Thus, the high court ruled that the action was in accordance with the express authority granted by North Carolina General Statute 9-12:

. . . any judge of the superior court, if he is of the opinion that it is necessary in order to provide a fair trial in any case . . . may order as many jurors as he deems necessary to be summoned from any county or counties in the same judicial district as the county of trial or in any adjoining judicial district.⁴⁶

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Ibid., at 146.

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Ibid.

46

Ibid.

Discussion

Ironically, the Lenoir County budget dispute case was appealed by the commissioners on grounds of jury selection, rather than the number of dollars asked for by the Kinston City Board of Education. Thus, it may well have been, in the view of the Lenoir County Commissioners, a politically unpopular move to vote in favor of the capital outlay funds requested by the school board. Hence, the commissioners must have known the funds were needed by the school system in light of their appeal contention.

CHAPTER V

SUMMARY AND CONCLUSIONS

SUMMARY

Education during the early years of this nation, America, was mainly a private concern which gradually grew to encompass the local community. Financial support came primarily from tuition charges and rate bills. Schooling, initially, was conducted for religious purposes and for many years education had an ineluctable tie with the Church. However, as the rationale for education changed to include broader political interests, so changed the methods of school support.

America's growth created a need for better educational programs and school facilities. While many communities were able to meet the financial responsibility of funding education at a higher level, others were not. This of course created educational disparities among the public schools. In time, it was recognized that the only true way to combat these disparities was for education to become a state function. Thus, each state was left to develop a system of public schools that best suited its idiosyncratic needs. Similarly, each state was also left to develop a system for financing public education.

Taxation emerged as the leading source of school funding, although various states utilized numerous finance plans in appropriating dollars to local school systems. Among the leading plans were flat grants, foundation programs, and power equalization schemes. Today, combinations of these plans are still being used as states seek to equalize their funding of public education. Thus, the ultimate plan of funding equalization for public schools still awaits discovery.

Until recent years most state funding plans for public education were seldom, if ever, challenged in court. However, since Serrano v. Priest in 1971, state and federal courts have been inundated with the issues of inequality and inequity, protected by constitutional guarantees, but often violated by state school finance plans. While many states have been ordered to revamp their school finance plans, North Carolina remains as one of the few states that has escaped such commands. However, to assume that North Carolina's method of school support is void of any inequity would be erroneous.

Since 1933 North Carolina has used the foundation approach to funding its public schools, with most of the costs being covered by the state. Under North Carolina law local support is required only for school facilities and maintenance, although the state encourages counties to supplement the foundation program with local funds. Recent figures indicate, however, that nearly one fourth of the total number

of current expense dollars consumed in North Carolina come from local funds. While state allocations, based on numerous formulas, to local school systems vary from county to county, differentials in these allocations remain relatively unimportant. However, local expenditures have become dangerously widespread, considering that North Carolina's constitution calls for a general and uniform system of free public schools.

Analysis of the data found in this study discloses wide variations in the number of local current expense dollars used to support the state foundation program. From a combined city/county high of \$837.48 in Orange County, to a low of \$230.12 in Bertie County, a differential of \$607.36 in per pupil expenditures can be found. Further investigation and comparison present evidence that county wealth, based on local tax resources, is significantly correlated to the number of local dollars spent on public education. While other variables such as per capita income and the county tax base should not be overlooked in studying North Carolina's widespread local funding differentials, the important point must not be forgotten: that nearly 25 cents of every dollar spent on public education in North Carolina comes from local funds.

These funding differentials become more meaningful as they are translated into their true terms -- educational disparities. Perusal of current educational data for North Carolina invariably reveals that counties of greater wealth

generally provide more course offerings, have broader curriculums, hire more additional professional and support personnel, pay higher salary supplements, and provide other materials and services well above the normal state allocations. Thus, educational inequality and funding inequity may be found among North Carolina's 100 counties and 142 local school systems.

While the questions of inequality and inequity have been avoided in North Carolina's courts, school funding decisions by the State Supreme Court have played an important role in developing the State's system of public schools. School finance issues such as taxation, school bonds, and budget disputes have been litigated in North Carolina's courts for more than a hundred years. With the recent rise in local funding, it is not unthinkable to expect the educational disparity issue to come before North Carolina's judicial system. However, court avoidance is quite possible as the North Carolina Legislature will likely address school funding issues in the near future.

Several research guide questions were formulated and listed in the introductory chapter of this study. While most of the answers to these questions are contained in Chapters II, III, and IV, their importance should not escape the summary thoughts of this research.

The first question concerns whether North Carolina's present method of school finance leads to educational

inequalities. It is clear that North Carolina's foundation program for financing public education represents the cornerstone of public school support. However, because North Carolina law permits unlimited local contributions to the current expense budget, educational opportunities vary greatly from one school system to another.

The second question asks whether a significant relationship exists between county wealth and local expenditures for education. From the analysis of the descriptive data found in Chapter III, it is obvious that a significant relationship between county wealth, measured in local revenue resources, and local current expense expenditures for public education is clearly in existence.

Questions three and four seek to identify major educational issues and their litigation status, regarding local financial support for public education in North Carolina. The issues of educational inequality and local funding inequity are likely to be challenged in North Carolina court rooms, if local support dollars continue to increase in the total percentage spent on North Carolina's public education program. However, public school finance reform has been a topic heavily discussed in recent years by North Carolina's educational and legislative leaders. Should a reform of finance equalization for the public schools be initiated in the near future, court action may be avoided.

The essence of the fifth question involves the current

applicability of legal principles, established by "landmark" cases, to the funding practices found in North Carolina. It is feasible that North Carolina's system of public school funding could be challenged on the same grounds presented in Serrano v. Priest, that the quality of a child's education cannot rest on the wealth of his parents and neighbors. This feasibility is predominately based on the widespread local funding differentials found in North Carolina.

The sixth question addresses school finance issues such as taxation, school bonds, and budget disputes, which have been litigated in North Carolina's courts for more than 100 years. These issues will continue to play an important part in the local school system budget process.

The final question from Chapter I asks, should North Carolina increase the basic level of support, or should North Carolina equalize the local school systems' ability to supplement the basic level of state support? In all sincerity and fairness, if North Carolina is to make significant improvements in both quality and quantity of educational programs, then both parts of this question must be answered in the affirmative. This action would provide a higher state base support as well as enhance local support, by equalizing the county/city effort.

CONCLUSIONS

The question of equalization of local funding was addressed by the evidence of fiscal disparity found among North Carolina's 142 school systems. While local will supporting educational expenditures above the state's foundation program is a key factor, this local will places a heavier burden on county and city school districts of lesser wealth. Thus, an equalization scheme to offset these burdens is needed in order to ameliorate the present system of school finance in North Carolina.

Drawing definite conclusions from legal research is difficult. This, of course, is primarily due to the everchanging circumstances present in different cases, which produce conflicting positions by the courts. However, based on analysis of cases, some general conclusions concerning the legal aspects of local financial support for public schools in North Carolina can be made with the aid of supporting historical and descriptive data found in this study.

1. The Supreme Court of North Carolina has repeatedly held that the decision of funding education at the local level rests with the board of county commissioners.

2. Presently, budget disputes between local boards of education and boards of county commissioners are decided by the courts on the grounds of "necessary expense" for the

maintenance of the schools. Thus, each case is decided upon the individual set of circumstances in purview of the court.

3. Educational funding disparity is due to local funding practices rather than the state's foundation program.

4. The coefficient of correlation of +.72 establishes a significant relationship between local revenue resources and local per pupil expenditures throughout North Carolina's 100 counties and 142 school districts.

5. Taxation suits for educational purposes have declined significantly since the state took over a majority of the funding for education in 1933. However, in recent years the percentage of local tax dollars for educational purposes has progressively increased.

6. Based on recent court action in other states it is feasible that the local funding issues could be challenged as a violation of North Carolina's constitution.

Recommendations for Future Study

Several questions related to local finance of public schools need to be addressed through additional research. What are the effects of additional spending above the state's minimum foundation program? Does additional spending make a difference in the quality of educational programs? How can local taxpaying ability be accurately measured? Would equal dollars (per pupil) mean equal results in each local school district? These questions are indicative of those to which future study should be directed.

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